(33,429)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1928.

No. 128

SANITARY REFRIGERATOR CO., PETITIONER,

vs.

ALEXANDER F. WINTERS AND BASIL R. CRAMPTON

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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[fol. 1] [Caption omitted.]

IN UNITED STATES DISTRICT COURT, EASTERN DISTRICT OF WISCONSIN

In Equity

ALEXANDER F. WINTERS and BASIL R. CRAMPTON

vs.

SANITARY REFRIGERATOR COMPANY

For Infringement of United States Letters Patent No. 1,385,102

BILL OF COMPLAINT—Filed Nov. 23, 1925

Alexander F. Winters and Basil R. Crampton, residents of the City of Grand Rapids in the County of Kent and State of Michigan and citizens and inhabitants of said State, bring this, their bill of complaint, against Sanitary Refrigerator Company, a corporation which, plaintiffs are informed and believe, was organized and exists under and by virtue of the laws of the State of Wisconsin and having its office and principal place of business in the City of Fon du Lac in the County of Fon du Lac and State of Wisconsin, with the Eastern District of Wisconsin, and complain and say:

I. This cause arises under the patent laws of the United States, being a suit to restrain infringement of certain here-[fol. 2] inafter named Letters Patent of the United States, and for an accounting of profits and damages arising from said infringement; wherefore this Court has jurisdiction.

II. Heretofore, and prior to December 7, 1920, Alexander F. Winters and Basil R. Crampton, being then, as now, residents of the City of Grand Rapids in the County of Kent and State of Michigan, were the original, first, and joint inventors of certain new and useful improvement in Latch, which improvements were not known or used by others in this country before their invention thereof, and were not patented or described in any printed publication in this or

any foreign country before their invention thereof, and were not in public use or on sale in the United States or described in any patent or printed publication anywhere for more than two years prior to their application for patent therefor in United States, and were not patented in any country foreign to the United States on an application filed by them or their legal representatives or assigns, more than twelve months prior to their application for patent therefor in the United States, and which have not been abandoned.

III. The said Alexander F. Winters and Basil R. Crampton, being as aforesaid, the original, first and joint inventors of said improvements, made application in due form of law on the seventh day of December 1920, to the Commissioner of Patents, for the grant of letters-patent of the United States for the said improvements; whereupon, after due proceedings were had, letters-patent No. 1,385,102, for said improvements, duly sealed, countersigned, and executed were issued to said Alexander F. Winters and Basil R. Crampton, whereby there was vested in them, their legal representatives and assigns, for the term of seventeen years from and after the nineteenth day of July, 1921, the exclusive right to make, use and vend said improvements throughout the United States and territories thereof, the original of which patent or a duly certified copy thereof is ready to be produced in court.

IV. By virtue of the premises, plaintiffs became are now and have been at all times since the nineteenth day of July, 1921, joint and exclusive owners of said letters-patent No. 1,385,102, and the inventions therein described, disclosed and claimed, and of all rights and privileges granted and secured thereby. Plaintiffs are owners of two-thirds of the capital stock of the corporation, Winters, Stryker & Crampton, a corporation of the State of Michigan, located at Grand Rapids, Michigan, where the Latch shown, described and claimed, by said letters-patent No. 1,385,102 has been manufactured and sold. Large sums of money have [fol. 3] been invested and expended and great trouble and expense in and about said invention has been borne for the purpose of developing the same and introducing it into use and making the same profitable to plaintiffs and the

corporation with which they are connected, and useful to the public. Said corporation is equipped and has the necessary capital and facilities for supplying all demands for the invention under said patent, promptly at a reasonable cost and at maximum efficiency. Plaintiffs have fully advised the public and the defendant of its ownership of said patent aforesaid, notwithstanding which, said defendant persists in infringement after said notice.

V. The Latch construction developed by plaintiffs is very useful, attractive in appearance and effective mechanically, so that it had an immediate sale in large quantities and was eagerly accepted by refrigerator manufacturers, displacing other types of latch constructions before used by them. Great commercial demand for the Latch constructions in accordance with the aforesaid patent of plaintiffs, was created and in a very short time large orders for said Latch constructions were received and have been continuously received since about the first of the year 1921 to the present time.

VI. The defendant, on the refrigerators which it manufactures, uses a latch construction purchased from the Dent Hardware Company, a corporation located at Fullerton in the State of Pensylvania, which is made in such close imitation of plaintiffs' latch that differences in the two are not discernable to ordinary observers, and has infringed said patent aforesaid by using said latch construction on its refrigerators and by selling the same attached to its refrigerators so that the invention claimed in said patent has been used and sold within the Western District of Wisconsin prior -o the commencement of this suit, and since the date of issue of said patent No. 1,385,102; and the defendant is still doing so and threatens to do so in the future. Defendant plans to interfere with the business and has interfered with the business which plaintiffs have, at great expense and effort, developed in the manufacture and sale of devices made in accordance with the said patent aforesaid, and infringed said patent all in defiance of the rights secured to the plaintiffs and to their great and irreparable loss and injury and whereby plaintiffs have been, are still being, and will be so long as such infringement continues greally and irreparably damaged and injured and deprived

[fol. 4] of profits which plaintiffs would otherwise make under said patent.

VII. Great and irreparable injury has resulted to plaintiffs from said infringement and great gains and profits have accrued therefrom to defendant which, in equity, belong to plaintiffs and should be accounted for by said defendant and paid to plaintiffs.

VIII. Plaintiffs are without adequate remedy, save in a court of equity, where matters of this nature are properly cognizable.

IX. Plaintiffs pray: (1) that defendant be required to answer this bill of complaint, but not under oath, answer under oath being expressly waived; (2) that a subpœna, ad respondendum be issued by the clerk of this court, directed to the defendant to answer the bill of complaint; (3) that an injunction pendente lite, and a permanent injunction be issued restraining the defendant, its respective agents, employes and confederates from further infringement of the aforesaid letters-patent in suit; (4) that defendant account for and pay to plaintiffs its profits and plaintiffs' damages arising from said infringement; and (5) that plaintiffs have such further relief as the premsies and equities may require.

Alexander F. Winters, Basil R. Crampton. Louis O. French, Solicitor for Plaintiffs, 68 Wisconsin St., Milwaukee, Wisconsin; Frank E. Liverance, Jr., Counsel for Plaintiffs.

Duly sworn to by Alexander F. Winters and Basil R. Crampton. Jurat omitted in printing.

[fol. 5] [File endorsement omitted.]

In United States District Court

Answer—Filed Dec. 29, 1925

To the Honorable, the Judges of the above entitled Court:

The answer of the above-entitled defendant to the Bill of Complaint exhibited against it by the above-named plaintiff.

1. Defendant admits the averments respecting its incorporation and place of business.

2. Defendant admits that this cause arises under the patent laws of the United States and that this Court has Jurisdiction.

3. Defendant admits that prior to December 7, 1920 Alexander F. Winters and Basil R. Crampton were residents of the City of Grand Rapids, in the County of Kent, and State of Michigan, but denies that said plaintiffs were the original, first and joint inventors of certain new and useful improvements in a latch; denies that said improvements were not known or used by others in this country before their invention thereof; denies that they were not patented or described in any printed publication in this or any foreign country before the invention thereof; denies that they were [fol. 6] not in public use or on sale in the United States or described in any patent or printed publication anywhere for more than two years prior to their application for patent thereof in the United States; denies that they were not patented in any country foreign to the United States on an application filed by them or their legal representatives or assigns, more than twelve months prior to their application for patent therefor in the United States and denies that said improvements have not been abandoned.

4. Defendant admits that said Alexander F. Winters and Basil R. Crampton made application on the 7th day of December, 1920 to the Commissioner of Patents for the grant of letters patent of the United States for the said improvements, and admits that after due proceedings were had, letters patent No. 1,385,102 for said improvements duly sealed, countersigned, and executed were issued to said Alexander F. Winters and Basil R. Crampton, but defendant denies that said letters patent were issued in due form of law, and denies that there was vested in them, their legal representatives and assigns, for the term of seventeen years from and after the 19th day of July, 1921, any exclusive rights and allege the contrary to be true.

5. Defendant denies that the plaintiffs are now and have been at all times since the 19th day of July, 1921, joint and exclusive owners of said Letters Patent No. 1,384,102 and the inventions therein described, disclosed and claimed and

of all rights and privileges granted and secured thereby, and leave plaintiffs to make full proof thereof. Defendant has no knowledge whether or not plaintiffs are owners of two-thirds of the capital stock of the corporation, Winters, Stryker & Crampton, where it is alleged that the latch of said letters patent has been manufactured and sold and leaves plaintiffs to make full proof thereof. Defendant denies that large sums of money have been invested and expended and great trouble and expense in and about said invention have been borne for the purpose of developing the same and introducing it into use and making the same profitable to plaintiffs and the corporation with which they are connected, and useful to the public. Defendant denies that said corporation is equipped and has the necessary capital and facilities for supplying all demands for the invention under said patent, promptly, at a reasonable cost and at maximum efficiency. Defendant denies that plaintiffs have fully advised the public and the defendant of its ownership of said patent aforesaid, and denies that defend- [fol. 7] ant persisted in infringement of any valid claim of said patent after notice.

6. Defendant denies that the latch construction developed by plaintiffs is very useful, attractive in appearance and effective mechanically, and denies that it had an immediate sale in large quantities and was eagerly accepted by refrigerator manufacturers, displacing other types of latch constructions before used by them. Defendant denies that great commercial demand for the latch constructions in accordance with the aforesaid patent of plaintiffs was created and denies that in a very short time large orders for said latch constructions were received and have been continuously received since about the first of the year 1921 to the present time.

7. Defendant admits that on the refrigerators which it manufacturers it uses a latch construction purchased from the Dent Hardward Company, a corporation located at Fullerton, in the State of Pennsylvania, but it denies that said latch is made in close imitation of plaintiffs' latch; denies that it has infringed said patent aforesaid by using said latch construction on its refrigerators and by selling the same attached to its refrigerators; denies that the in-

vention named in said patent has been used and sold in the Western District of Wisconsin prior to the commencement of this suit, and since the date of issue of said patent No. 1,385,102; and denies that it is still doing so and threatens to do so in the future. Defendant denies that it plans to interfere with the business and has interfered with the business which plaintiffs have, developed in the manufacture and sale of devices made in accordance with the said patent aforesaid; denies that it is infringing said patent in defiance of the rights secured to the plaintiffs and to their great irreparable loss and injury and whereby plaintiffs have been, are still being, and will be so long as such infringement continues, greatly and irreparably damaged and injured and deprived of profits which plaintiffs would otherwise make under said patent, and allege the contrary to be true.

8. Defendant denies that great and irreparable injury has resulted to plaintiffs from said infringement and denies that great gains and profits have accrued therefrom to defendant, which, in equity, belong to plaintiffs and should be accounted for by said defendant and paid to plaintiffs.

9. Defendant denies that plaintiffs are without adequate remedy, save in a court of equity.

10. Further answering, defendant avers that prior to the alleged invention of the said Alexander F. Winters and [fol. 8] Basil R. Crampton, set forth in the letters patent sued upon, the said alleged invention had been patented or described in the following Letters Patent of the United States, and that, therefore, said Letters Patent sued upon are null and void, namely:

M. Judd, No. 6,907, Feb. 8, 1876;
F. P. Catlin, No. 52,119, Jan. 16, 1866;
H. F. Keil, No. 554,448, Feb. 11, 1896;
H. H. Dent, No. 670,506, Mch. 26, 1901;
Hadka, No. 743,716, Nov. 10, 1903;
Blye, No. 1,238,876, Sept. 4, 1917;
Ward, No. 1,250,736, Dec. 18, 1917;

11. And, further answering, the defendant avers that prior to the alleged invention of the said Alexander F.

Winters and Basil R. Crampton, in Latches, set forth in the Letters Patent sued upon,—the said alleged invention was known to and used by the foregoing persons, at various places,—and that therefore said Letters Patent are null and void.

12. Defendant further avers on information and belief that the invention of said Winters & Crampton patent was known to and used by other persons in this and foreign countries, and is patented and described in other Letters Patent of this and other countries, the prior uses and names of which persons and the numbers and dates of which Letters Patent are at present unknown to defendant, but which when ascertained defendant prays leave to insert by amendment in its answer.

13. Defendant, further answering, avers that the Letters Patent No. 1,385,102, to Winters & Crampton, herein sued upon are null and void, because the subject matter therein set forth and claimed is not patentable under the laws of the United States in view of the state of the art relating to the manufacture and use of latches, and further avers that the subject-matter of said patent involves no more than an ordinary expedient of good workmanship and mechanical skill, over prior constructions.

14. Defendant, further answering, avers that the claims of the Letters Patent sued upon cannot be construed to cover or include anything ever made, sold, or used by this defendant, and that they are invalid and ineffectual for such purpose, not only because of the cancellations, of the declarations amounting to disclaimers, and of the express limitations and restrictions, made or assented to by said patents in their application for said Letters Patent, and, [fol. 9] moreover, made or assented to in consequence of rejections and objections by the Patent Office, which were acquiesced in by the applicants as a prerequisite to obtaining the allowance of their said Letters Patent as finally issued, all as disclosed by the file-wrapper of said Letters Patent, ready in court to be produced.

15. Defendant further answering, and in conclusion, denies that it has ever at any time or at any place made, sold or used the alleged invention or substantial and ma-

terial parts thereof described in the Letters Patent recited in the Bill, and made the subject matter of the claims thereof when properly construed, and denies that it intends to so do.

All of which matters and things this defendant is ready and willing to aver, maintain and prove, as this Honorable Court shall direct, and therefore prays that the Bill of Complaint herein may be dismissed with its reasonable costs, charges and disbursements in this behalf most wrongfully sustained, and to be taxed.

Sanitary Refrigerator Co. Wm. Mauthe, Pres. H. R. Potter, Secretary. John W. McMillan, Solicitor for Defendant. E. Hayward Fairbanks, of Counsel for Defendant. (Corporate Seal.)

[File endorsement omitted.]

Duly sworn to by Wm. Mauthe. Jurat omitted in printing.

[File endorsement omitted.]

[fol. 10] IN UNITED STATES DISTRICT COURT

* * * * * * *

Condensed Statement of Evidence—Filed June 27, 1927

Condensed Record Pursuant to Equity Rule 75

The cause came on for trial before Honorable F. A. Geiger at 4:45 o'clock P. M. on February 18th, 1927.

PLAINTIFF'S PROOFS IN CHIEF

BASIL R. CRAMPTON testified that he was forty-five years old, was vice-president of the Winters & Crampton Manufacturing Company, refrigerator hardware manufacturers, which Company or its predecessors had been engaged in the manufacture of refrigerator hardware for between eight and nine years, he being one of the inventors of

Patent No. 1,385,102 issued July 19, 1921, offered in evidence as Plaintiffs' Exhibit No. 1. He had charge of the sales and was assistant in manufacture and supervising. About four weeks after the latch of the patent in suit was developed it was offered for sale with very good success being sold to the Sanitary Refrigerator Company, Bowen Refrigerator Company, the Illinois Refrigerator Company, the Husman Refrigerator Company, the Tennessee Furniture Corporation, the Banta Refrigerator Company and the Ligonier Refrigerator Company. About 90% of commercial refrigerators, groceries and hotels and butcher shops are using this principle of latch, the plaintiffs' Company selling all of the commercial refrigerators except two or three companies. Plaintiffs' latch was also sold to household refrigerator companies as the Sanitary Refrigerator Company or Illinois Refrigerator Company, the Bowen Refrigerator Company and the Arlington Refrigerator Company, and the Tennessee Furniture Corporation.

The Court here said: "I want to say now, Mr. Liverance, that if the art here discloses sufficient breadth of position given to the device covered by the patent, why, the question whether it is evaded by merely putting on a lug rather than using the other side of the keeper, is a very narrow question."

Mr. Liverance stated that he contended that the lug comes in the terms of the claim and is the same thing, an [fol. 11] evasion of the patent and that the prior art does not require any interpretation to restrict it to that point.

The Court then said: "The question first in order is where this patent stands on the art. For present purposes I will say, I will give it the benefit of the presumption to which it is entitled and express my present view that the defendant's device shows what, in the absence of contravening art, should be held to be an evasion."

Mr. Crampton then testified that over 2,000,000 latches under the patent in suit had been sold and that 90% of the commercial refrigerator manufacturers use this principle, that particular latch.

Mr. Liverance then said that what experting on the prior art is needed, he would take care of it in the argument,

and he also stated defendant had already taken its testimony.

On cross-examination, Mr. Crampton stated that 90% of the volume of hardware used on commercial refrigerators was plaintiffs' latch represented by the patent in suit, and that only 10% was manufactured by other companies, the manufacture of the plaintiffs' latch in suit starting in January 1921.

DEFENDANT'S TESTIMONY

CHARLES C. KAISER testified that he was seventy-five years old, residing in Allentown, Pa. and was connected with the Dent Hardware Company, a Pennsylvania Corporation, manufacturing refrigerators, cold storage hardware and iron doors, etc., which Corporation had been in existence since 1894, a period of thirty-two years, the present officers being H. H. Dent, President, H. C. Dent, Vice-President, H. P. Neward, Secretary, M. R. Newhard, Ass't Secretary, Chas. C. Kaiser, Treasurer and Roy K. Wise, Ass't Treasurer.

The Dent Hardware Company has about 250 employees and in 1894 the locks then used were the invention of Mr. Kaiser and prior to that time there was practically no outside or service lock used in connection with refrigerators. The Dent Hardware Company was not the first but practically the first to make outside refrigerator locks used in quantities. Mr. Kaiser and his associates had a practical working knowledge of this latch business.

The Court: This testimony doesn't amount to much except as we can see the patents.

The early Dent Patent No. 670,506, patented March 26, 1901 was one of the first practical refrigerator latches [fol. 12] on the market in the year 1901. These latches were made in very large quantities of thousands every year and many repeat orders were received, this latch giving good satisfaction.

The Court: Let's get to an examination of these patents and see where any of them touch the art covered by the

plaintiffs' patent, which is quite specific. I have no doubt the defendant will prove the existence of a lot of latches.

Mr. Liverance: Innumerable latches.

(Informal discussion between Court and Counsel.)

The Court: All right. Go on, Mr. McMillan.

(Whereupon Mr. McMillan read excerpts from the deposition of William J. Jackson.)

The Court: How did these depositions ever get into this form. Here is a man who is apparently an expert, who is apparently deciding this case. I am willing to have the aid of anybody connected with the art, but I manifestly——

Mr. McMillan: He is giving his reasons, your Honor.

The Court: That is very true; but he is directing himself to the question, is there anything novel about this. If he says there was nothing novel about it because there were other patents here, the patents here furnish the answer to the questions.

Mr. McMillan: He refers to those.

The Court: Yes, I know, but that doesn't make the patent any better. He is dealing there with an ultimate question. If, as an expert, for the purpose of elucidating the device, he points out the mechanical structure, that is one thing, but so far as the patents are concerned, the testimony isn't necessary unless it can fairly be said it would be an aid to the Court in understanding it. The statement of the witness when pointing them out that he is unable to see any novelty about them, that may be true. That may be due to his infirmities. He is arguing the case with the idea of substantiating his conclusion, which isn't for him to express, as to whether there was a novelty.

The peculiar part of this case is that the defendant evidently claims at one and the same time the plaintiffs' structure, Crampton's, is devoid of novelty, and yet the defendant's patentee recognized Crampton's patent and seeks to differentiate from it on mighty narrow grounds.

Mr. McMillan: The patent of the plaintiff is a very narrow patent.

The Court: Yes; but if the plaintiffs' patent is not any good the defendant's can't be much better. That is not here in the case at all. We are not required to pass on the defendant's patent as such.

[fol. 13] Mr. McMillan: If the Court please, we haven't as yet made much of a record in this case.

The Court: All right. Supposing you make a record. I think the record will be confined, as a practical matter, to the patents. I do not care to hear any depositions that involve discussion of patents by an expert, an expert who has discussed these patents in a way that may be helpful to the parties. Counsel can get that discussion before the Court when reading the expert's deposition.

Mr. McMillan: You don't want to hear any part of that deposition?

The Court: Why, no. I have the patents here in a way that you gentlemen can discuss the patents far more effectively for the court to grasp than the Court can grasp by reading from a position. If you gentlemen have been diverted from a course you otherwise would have pursued in introducing evidence here, you can start now.

Mr. Liverance: If the Court please, the only evidence I have to introduce is a little rebuttal testimony.

The Court: I assumed your case was made by introducing the patent and these exhibits.

Mr. Liverance: Yes. I have no experts.

The Court: You may make your offers of these various patents, Mr. McMillan, alleged anticipating art patents.

Mr. McMillan: There are some of these patents in this book which are not cited in the answer, but Mr. Fairbanks and Mr. Liverance have agreed under a stipulation they may be recevied in evidence as if they were pleaded at the outset.

The Court: All right.

Mr. McMillan: Shall I offer these by number, or shall I just offer the book as an exhibit, the original book which I now have here?

The Court: Offer them as you have them there, so far as I am concerned. I shall ask you sooner or later to point out what particular patent or patents are relied on here. This is true, Mr. McMillan. I don't say that the defendant here is held to what is said in the patent under which the defend-

ant meets this, necessarily, but that is rather strong evidence against the defendant of his conception that he was making a structure which, upon examination, would be regarded as being within the Crampton patent. He says he isn't following Crampton, he disclaims Crampton.

Mr. McMillan: That is true.

The Court: If he disclaims Crampton, and yet his device appears to be so close to Crampton, is his device novel, an [fol. 14] independent invention, something that the art has not heretofore suggested?

Mr. McMillan: As to form only.

The Court: Or, is he following old teachings of the art?

Mr. McMillan: I think he is following old teachings of the art. The only novelty in his patent or in the Winters-Crampton patent is in the particular features described in those patents.

The Court: Well, yes; but does he intend in this case to concede novelty to Crampton?

Mr. McMillan: He does not.

The Court: He says Crampton is old?

Mr. McMillan: He says Crampton is old.

The Court: Whether Crampton is old or new, he doesn't get away from Crampton except by the use of the lug.

Mr. McMillan: His position on that is he is more closely allied to the prior art in connection with his construction than Crampton is.

The Court: But in his patent he does not disclaim the prior art.

Mr. McMillan: No, he does not disclaim the prior art.

The Court: If his construction is closer to some other prior art structure, it is rather significant that he seemed to think he was closer to Crampton than anybody else, and that he had to disclaim Crampton.

Mr. McMillan: He disclaimed Crampton on account of a citation, I presume.

The Court: No. This was in his original application.

Mr. McMillan: I don't understand it so from the brief.

The Court: It isn't in the brief. It is right in his specification.

Mr. McMillan: I presumed that was put in afterwards on citation of Crampton to his patent device.

The Court: Well, I don't know.

Mr. Liverance: That is so, your Honor. Winters and Crampton was cited in this application, and then this disclaimer was put in.

The Court: It isn't a disclaimer, doesn't amount to anything.

Mr. Liverance: Well, he didn't claim what was in that, I believe.

The Court: All right. Make your offers.

Mr. McMillan: Practically all these patents are referred to in the deposition which I started to read on Friday.

The Court: Let's assume your deposition is in evidence. [fol. 15] Mr. McMillan: All right.

The Court: And has be-n read.

Mr. McMillan: And that these patents are received in evidence in connection with that deposition?

The Court: Yes.

Mr. McMillan: That also brings into the record, I think, in Mr. Jackson's testimony, the four exhibits, the square one.

The Court: These two.

Mr. McMillan: Yes, they are exhibits; "Defendant's Exhibit 1914 Latch," which I understand is the Condit patent, or substantially that type, and the original old-fashioned latch of the defendant, which has just the one movement for tightening the door and a lug on top for opening it. Then there is also this 1912 device of the defendant which seats with the keeper member on the door being slammed, with a beveled surface on the keeper, and it has a lug at the head of the latch member which presses against a device similar to what is on the defendant's latch now.

The Court: Yes.

Mr. McMillan: That is the defendant's 1912 latch. Those five exhibits and patents to which I referred constitute the defendant's case.

Mr. Kaiser then testified that he recognized the drawing of the Schrader Patents No. 1,170,685, 1,128,727, 1,265,120, 1,117,709, 1,567,867 and 1,567,866 and that he had manufactured refrigerator locks or latches under said patents, to the extent of a great many thousands each year.

In these various types of latches the latch member is sometime pivoted to the door and sometimes to the jamb.

In 1901, according to the early Dent Patent No. 670,506, it was common practice to pivot the lever latch to the door or to brackets or lugs on the door. As far back as the year 1900, these latches had a latch member and a keeper and a cam or lug of some kind on the latch member so that the keeper would trip the latch member if the door was shut.

The Dent Hardware Company was notified by the Sanitary Refrigerator Company to hold shipment on these refrigerator latches in dispute as the Sanitary Refrigerator Company was told by Winters, Stryker & Crampton that their patent was infringed. Wiedersheim & Fairbanks, the Dent Hardware Company's attorneys advised the Dent Hardware Company that they were manufacturing under their own patent and not infringing on Winters, Stryker & Crampton's Patent. The Dent Hardware Company so notified the Sanitary Refrigerator Company. Winters, Stryker & Crampton notified the Dent Hardware Company of [fol. 16] the existence of the patent in suit.

In the Fall of 1925, the Dent Hardware Company's attorneys notified them that their patent, then pending in the Patent Office, would be granted. The witness remembered his attention being called to lines 56 and 74, page two of Patent 1,575,647, reading as follows:

"I am aware of Patent No. 1,385,102 dated July 19th, 1921, and I disclaim the structure therein disclosed, as my invention is differentiated, since whereas the structure disclosed in said patent utilizes a pin 12 carried by the latch arm 11, which co-acts with an upper cam edge 18 of the keeper member 17; in my novel construction the upper edge of my keeper plate B3 has no function, but the pivotal latch C6 carries a cam, C1, inclined to the pivot of said latch and adapted to co-act with a pin, B8, carried by and laterally projecting from the inner wall of the keeper plate, B3, thereby to swing the terminal tongue of the latch into the horizontal locking position; and to none of the constructions of the prior art do I herein make claim."

The witness believed, in view of the foregoing quotation that he had a right to manufacture and sell these patented refrigerator latches to the Sanitary Refrigerator Company

or any other customers. He also stated that he had manufactured these refrigerator latches here in dispute, under the advice of counsel to the effect that they did not infringe any valid claims of any prior patents.

Defendant's Exhibit, Dent 1914 Latch was offered in evidence and the witness stated they were manufactured in former years in thousands and today in dozens and that the latch worked acurately and positively.

The Grand Rapids Brass Company and some of the other concerns in this same line of business, the witness said, were Keeler Brass Company, Winters, Stryker & Crampton, Arcade Manufacturing Company, Fauster, Miriam & Company, Artistic Bronze Company and Dent Hardware Company.

On Mr. Liverance's cross-examination the wtness said that the structure of the Dent Patent No. 670,506 was being manufactured to the extent of about 25% in comparison with their other output. If the handle of the Exhibit Dent 1914 Latch should accidentally fall across the door opening when the door is open that would cause it not to close. The witness had never read the Winters & Crampton patent in suit but stated that the matter from line thirteen to the period in line thirty-seven of the Winters & Crampton Patent No. 1,385,102 described defendant's Exhibit Dent 1914 [fol. 17] Latch. He did not know why this latter latch was not furnished to the Sanitary Refrigerator Company. In the Latch furnished the Sanitary Refrigerator Company it made no difference whether the handle remained vertical or horizontal when closing the door and there is no possibility of the latch handle in the latch furnished the Sanitary Refrigerator Company getting in the way of the door when the door is closed. He had sold latches to the Sanitary Refrigerator Company before March 9th, 1926 but was not sure that such latches were the ones involved in this suit. He did not know whether anyone else sold the Sanitary Refrigerator Company latches of this type in the year 1925.

The Dent Hardware Company was thoroughly familiar with the Winters & Crampton latch No. 1,385,102. The Dent Company carried a large line of different kinds of samples and the buyer makes his own selection as the Sanitary Re-

frigerator Company did in this case, the witness not knowing what induced the Sanitary Company to buy this particular latch On redirect, the witness stated that the defendant's Exhibit Dent 1901 Latch conformed to the structure of Mr. Dent's 1901 Patent.

HENRY P. NEWHARD

Henry P. Newhard testified that he was sixty-three years old, resided in Fullerton, Pa., was a practical mechanic and one of the officers of the Dent Hardware Company. He had charge of production in the mechanical development of refrigerator latches at his plant and was associated with Mr. Kaiser and Mr. Dent in the early days when the Dent Hardware Company was formed, these three gentlemen having been together ever since. He was present during the taking of Mr. Kaiser's deposition and of his own knowledge knew the various facts testified to by Mr. Kaiser were true and correct. He understood the drawings of the Dent Patent No. 670,506 of 1901 and hundreds of thousands of latches were manufactured like this patent. The latch was still being manufactured but not in such large quantities as formerly. In 1901 it was the practice to mount the latch pivotally, open the door and have the keeper fastened to the jamb. Sometimes the latch has been pivoted to the jamb and the keeper has been fastened to the door, there being no serious defect in this construction. The above types of these latches are being made and sold at the present time. Thousands like the Exhibit Dent 1914 Latch have been made [fol. 18] and sold and there is no serious defect in the operation by reason of the latch being pivoted on the jamb. Anybody with any sense would stand the latch up vertical before they shut the door. Latches like the Schrader Patents which were shown Mr. Kaiser had been manufactured to the extent of hundreds of thousands; the fastener of Patent 1,265,120 being about as good a seller as any, and all of them were practical and commercial latches and his customers were satisfied with them. He remembered receiving advice from counsel that Patent No. 1,575,647 would be granted along about the Fall of 1925 and being informed that he should go ahead with this latch, the latter having

been manufactured in good faith and under the advice of counsel.

On cross-examination by Mr. Liverance he stated that the cam of defendant's patent 1,575,647 is put on to force the lever in the hook. He did not know whether or not other latches not quite like the Schrader Patent were manufactured for the Sanitary Refrigerator Company. He had never read the Winters & Crampton Patent in suit. On reading from line thirteen, column one, down to the period in line thirty-seven of the patent in suit, he stated that that substantially described the 1914 Latch which has been offered. The next question and answer were as follows:

"In the latch shown by the Schrader patent No. 1,575,647 a latch bar pivotly mounted at its end,—includes a handle, *c*5, one arm, *c*7, in a line with the handle, a cam, *c*1, projecting in right angles from the arm, *c*7, and the latch can be turned either to vertical position as shown in figure 1, or to a horizontal position as shown in figure 2 and figure 8. The strike or keeper has a base, *b*1, a post projecting outward from the base, and the base terminates in a head that is substantially triangular in shape and has a lug, *b*9, extending laterally from it When the latch is in vertical position and the door is closed the cam, *c*1, strikes against the lug and puts the handle to a closing position If the door is closed the arm, *c*7, would strike the concave edge, *b*5, flip the handle up until the arm had passed by the lower point of the head and then the arm would go into the retaining notch of the keeper That is correct?

A. Yes sir.

He did not know how far the latch bar, including the handle *c*5, and the arm, *c*7, swings, but thought it was about one quarter of a circle. On one end of its movement it will [fol. 19] be vertical on the refrigerator door and at the other end of its movement horizontal.

At this point, Counsel stipulated as follows:

"1. That the parties, Plaintiffs and Defendant, are correctly described in the first paragraph of the Bill of Complaint herein.

"2. That uncertified copies of U. S. and foreign letters patent may be offered and admitted in evidence and used with the same force and effect as if duly certified, subject, however, to correction if any errors appear therein.

"3. It is admitted by Defendant's Counsel for the purpose of this suit that the Defendant's Corporation had notice of the patent in suit prior to the filing of the Bill herein.

"4. That the objects marked 'Defendant's Exhibit—Plaintiffs' Latch' and 'Defendant's Exhibit—Defendant's Latch' correctly represent the Plaintiffs' latch structure as set forth in the patent in suit and Defendant's latch as used on refrigerators substantially as set forth in Defendant's patent No. 1,575,647, March 9, 1926.

"5. That all exhibits may be retained in the custody of the Counsel producing the same until the hearing of the cause or until required to be produced by Counsel for the opposing party."

William J. Jackson's Deposition

William J. Jackson, called as an expert for Defendant, after stating his qualifications, explained as to the terminology of the terms "keeper" and "latch" in the Plaintiffs' patent No. 1,385,102 and Defendant's patent No. 1,575,647. Reference was then made to the British patent to Downing, No. 16,566 wherein the latch is carried by the fixed part and the equivalent of the keeper by the movable part. In U. S. Patent No. 702,185 to Charles a locking latch *c* is provided with a shoulder *d* and a second shoulder *e* is pivoted to a fixed strip, the movable part of the door being provided with a keeper. In the Keil patent No. 554,448, the keeper was mounted upon a fixed element and the latch mounted upon the movable element as the door, this construction being also shown in Patents Nos. 632,009, 743,716, and Dent No. 670,506. The notch or seat in the keeper which receives the end of the latch member has been positioned on the top of the keeper as in Hadka, or on the bottom of the keeper as in Keil. In the patent to Charles

the keeper is slotted upon its top. The slot in the keeper [fol. 20] has been variously positioned, no matter whether the keeper was upon the door or upon the jamb. The Dent patent shows the slot upon the top of the keeper. The patent to Ward No. 1,250,736 shows the slot within the keeper, upon the underside. A similar arrangement of slot and keeper is shown in the Blye patent No. 1,238,876.

Prior to December 1920 a pivotally mounted latch member having one arm extending from the pivot and a handle portion extending in the opposite direction from the pivot point, with a second arm extending from the handle portion adjacent the pivot point and in a direction substantially at right angles to the first arm was old in the British patent to Downing, as shown in Figs. 1 and 2. The U. S. Charles Patent No. 702,185 shows a pivot point *b* carrying the latch, member *c* having offsets *d* and *e*, the offset *e* being arranged substantially at right angles to the offset *d*. Patent No. 1,022,872 shows a pivot point G which supports a combined lever or handle I which also takes the place of a weight, and formed integral therewith is an arm J and a forwardly extending latch or terminal F1, all being of integral structure and the arm J is substantially at right angles to the latch member or terminal F1. Gregg patent No. 871,269 also shows a pivot point having an arm extending from the point in one direction, and a second arm extending in opposed relation, and a third arm at right angles to the latch member.

The witness stated that there was no novelty in positioning a latch in the horizontal position so that when the door is shut the free end of the latch abuts under the curved bottom side of the keeper, rides downwardly and then upwardly into the notch and the keeper in view of Fritts Patent No. 632,009, and the Hadka patent No. 743,716, the notch in Hadka's keeper, however, being on the top of the keeper.

Prior to December 1920 there was no novelty in the idea of a latch member so pivoted with the handle member extending considerably to one side of the pivot point so that the handle would tend to drop by gravity into its lowest position in view of the patents to Keil; Charles; Downing; Dent; Raaths; Thorne, No. 1,127,116, Feb. 2, 1915;

and the patent No. 138,112, dated April 22, 1873 to Ambrun and Olfemann.

The witness stated that prior to December 1920 the Dent patent No. 670,506 disclosed a pivotal latch member having a lug or abutment adapted to impact against the keeper during the movement of the latch towards the keeper for the purpose of tripping the latch. The patent No. 138,-[fol. 21] 112 as well as the patents to Charles, Keil and the German patent No. 232,851 also showed this. The idea of the nose or outer end of the pivotal latch member being adapted to contact with a top or bottom curved wall of the keeper, thus to be tripped prior to engaging the top or bottom notch of the keeper was shown in the patents to Dent, Keil, the German patent and the patents to Charles, Thorne, Blye, Hadka, Ward and Fritz.

The Dent patent was assigned to the Dent Hardware Company, which has been in existence for many years. The witness had personal knowledge of a refrigerator with a latch automatically tripped or locked when the door was shut prior to December 1920.

The witness was familiar with the patent in suit and stated its salient features to be as follows:—

The latch is carried by the door and the keeper is carried by what is usually termed the jamb of the door. Taking up first the latch the structure may be said to comprise a base plate which is screwed to the door and the base plate in turn carries what is termed in the patent a post and which is designated 5. Pivotally carried by the post in an elongated, integral member made up of three parts to wit: (a) A forwardly projected arm 9 (b) A handle or lever 11, the longitudinal axis of the arm and lever being substantially one and the same; and (c) An arm 12 which is arranged substantially at right angles to the arm 9. Taking up now the keeper, it may be said to comprise a plate or base which is screwed to the door jamb and has extended therefrom what is termed in the patent a post 16, the latter terminating in a triangular shaped forwardly extending member or head 17. This head has an upper curved surface 18, a lower curved surface 19, and a cut-away portion underneath the post 16 to form a wedging cam 20.

The file-wrapper of the patent in suit discloses that claim 5, line 8, "adjacent" was substituted for "a short distance from"

The application originally contained eight claims including the following:

"7. A keeper for latches comprising a base, a post projecting outwardly from the base at the upper portion thereof, and a head to the post depending below the same and being substantially triangular in outline, having an upper and a lower outer side coming substantially to a point and an inner upwardly and inwardly inclined side, substantially as described.

[fol. 22] "The above claim was rejected for the reason that it did not "Patentably distinguish" over the following patents:

Keil 554,448 Feb. 11, 1896 (292-241).
Ward 1,250,736 Dec. 18, 1917 (292-242).

Attention was also called to the following patents:
Dent 670,506 Mar. 26, 1901 (292-241).
Hadka 743,716 Nov. 10, 1903 (and)
Blye, 1,238,876 Sept. 4, 1917 (292-242)."

The cancelled claim 7 was drawn to the keeper per se and did not include a latch. The claimed elements of the cancelled claim 7 included a base, a post which projected from the upper part of the base outwardly and a head on the post depending below the post and of substantially triangular outline. The claim also sets up that the upper and lower outer sides come substantially to a point, and that there is an inner upwardly and inwardly inclined side.

The keeper construction of the prior Dent patent No. 670,506 constitutes an answer of anticipation of Winters and Crampton original claim 7 and the witness believed that Mr. Dent was really the inventor of this construction which was also shown in the patents to Keil and Ward. The latch member of the patent in suit as defined in claim 5 thereof has a handle member with a forward extension pivotally mounted, and a right handle arm in proximity to the pivot which is substantially disclosed in the Dent patent No. 670,506 as well as the British patent to Downing, the Charles patent and the German patent.

The witness stated that claim 1 of the patent in suit was substantially met by the Dent patent for the following reasons:

Certainly if Mr. Dent does not show each and every feature as outlined in this particular part of the claim, Mr. Dent does show an equivalent structure. The door and the casing is present; the base and post with the head, the outer end of the post depending below the post and having upper and lower curved outer sides coming to a point and with an inner upwardly and inwardly inclined side are also present. This is what I shall term for the sake of convenience of the Court the first part of the claim. We now come to the latch part of the claim which is attached to the door. The latch member comprises a base, a post projected from the base, a post having an arm paralleling the base. Between these parts is pivotally mounted a latch lever extended forwardly from which is one arm having an under cam side and a handle portion extended in the opposite [fol. 23] direction from the pivot, and a third arm projected from the handle portion adjacent the pivot and being substantially at right angles to the first arm. Probably for this portion of the claim the patent to Dent No. 670,506 like the keeper is as good a reference as any. We find in the Dent patent a base attached to the door. We find an outstanding post which is the equivalent of the Winters and Crampton patent in suit and we find pivoted to such post a latch lever having a cam side; we find a handle portion extending in an opposite direction and we find an arm projecting from the handle portion at right angles to the handles which also has a camming surface. Likewise, it is believed that the patent to Keil shows an equivalent structure.

The Witness stated as regards Claim No. 2 of the patent in suit that the portion of the claim relating to the keeper is the same as stated in Claim No. 1. The latch lever portion of the claim brings in a slightly different function, since Claim No. 2 functionally brings out that the second arm is adapted to ride against the upper outer side of the keeper when the door is closed.

The references discussed in connection with Claim No. 1 are pertinent to claim No. 2 and any mechanical elements of Claim No. 2 not found in the citations are met by equivalent structures in the prior art.

Claim No. 3 of the patent in suit is a combination claim calling for a door and a casing and the keeper to be at-

tached to the casing. It calls for a latch lever pivoted to the door so as to co-operate with the keeper to hold the door closed. The balance of the claim calls in general terms for "means on the keeper," and "means on the latch lever to engage with the keeper on the outer sides thereof," whereby the lever may be swung into. engagement with the keeper at the other side thereof when the door is closed. The Dent Patent No. 670,506 is a structure equivalent to that shown in the patent in suit. The patents to Ward, Keil, Raath's No. 1,022,872, Hadka No. 743,716 and Fritts No. 632,009 are also pertinent.

Claim No. 4 calls for a door, a casing, a keeper attached to the casing and a latch lever pivotally connected to the door to engage the keeper. This claim says that when the door is moved to a closed position there is cause to swing the lever from a vertical position to a horizontal position and engage the other arm under the keeper and that there is an arm which engages with the above outer portion of [fol. 24] the keeper when the door is moved to closing position. The references previously considered, if not showing all of the elements exactly as claimed show equivalent structures.

As to Claim No. 7 the patents previously considered show the elements set forth therein. Defendant's Exhibit, Plaintiff's Latch substantially conforms with the structure of the plaintiff's patent in suit. Defendant's Exhibit, Defendant's Latch correctly represents the defendant's device. The Schrader Patent No. 1,575,647 is correctly represented in Defendant's Exhibit, Defendant's Latch with which the witness was familiar. Page two of said Schrader Patent, lines 57 to 74 inclusive, read as follows:

"I am aware of Patent No. 1,385,102, dated July 19, 1921, and I disclaim the structure therein disclosed, as my invention is differentiated therefrom, since whereas the structure disclosed in said patent utilizes a pin 12 carried by the latch arm 11, which coacts with an upper cam edge 18 of the keeper member 17; in my novel construction the upper edge of my keeper plate *b*-2 has no function, but the pivotal latch *c*-6 carriers a cam *c*-1 inclined to the pivot of said latch and adapted to coact with a pin *b*-8 carried

by and laterally projecting from, the inner wall of the keeper plate *b*-3 thereby to swing the terminal tongue of the latch into the horizontal locking position; and to none of the constructions of the prior art do I herein make claim."

The Patent Office apparently took into consideration as the chief point that the Schrader device had a cam *c*-1 inclined to the pivot of the latch which cam was adapted to coact with a laterally extended pin *b*-8 carried by and projecting from the inner wall of the keeper plate.

The file-wrapper of the Schrader Patent 1,575,647 shows that the patent examiner cited he Winters Patent No. 1,385,-102 here in suit and following the insertion of the disclaimer above quoted the Schrader Patent was issued. Defendant's Exhibit comparative drawing is explained as follows:

"British Patent No. 16.566 which is the patent to Downing previously referred to in this deposition and would say that there is present a pivotal point *p*, an operation lever or handle terminating in a catch portion, there being an arm *f*-1 adjacent the pivot point *p*, in this particular patent the lever catch is carried by a fixed element and the keeper by movable element.

The next illustration is that of the United States patent to Dent No. 670,506 previously referred to in this deposi-[fol. 25] tion which in my opinion shows a structure equivalent to the structure in the patent in suit.

The next succeeding illustration is that of Charles No. 702,185, this structure like that in the British patent shows a latch upon the fixed part and the keeper upon the movable part. Other than this construction it is believed that Charles' device is the full equivalent of the patent in suit, since the pivot point is present, the operating arm terminating in an arm or extension *d* beyond the pivot point and having another arm *e* adjacent a pivot point.

Taking up now patent 871,269 to Gregg, the pivot point is present, the handle portion and a forwardly projecting nose and a second nose at right angles to the pivot point is shown in this sketch, and the nose or extension 14 is arranged at right angles to the pivot point. The locking attachment is shown as being secured to a swinging door.

Taking up now patent to Raaths, No. 1,022,872 this sketch shows the pivot point, and operating lever which is weighted to gravitate to a horizontal position which arm or lever terminates in a forwardly projecting nose to engage a keeper and the arm or lever is provided with a member *j* which is arranged substantially at right angles to the longitudinal axis of the operating lever.

Referring now to the patent to Kiekert, No. 232,851 which is a German patent it is submitted that the pivot point is present, the operating lever is present extending from which is a keeper engaging nose and a second nose or arm is present substantially at right angles to the longest axis of the operating lever and nose.

Referring now to the sketch portraying drawing in patent No. 138,112 the structure there is a pivot point, a lever or handle B having an arm *b* substantially at right angles to the arm B and having extending beyond the lever B another arm or extension. The lever B is pivoted between the posts *c*. The reference numeral D in effect represents the jamb of the door.

The next succeeding sketch shows the structure of the patent in suit which has been fully described.

The next succeeding sketch is that of defendant's patent to wit, the Schrader patent and it is believed that this particular structure has been so fully set forth that further description would be superfluous."

"Claim 1 in line 99 of page 2 of patent No. 1,385,102 calls for an arm projecting from the handle portion a distance from the pivot and lying substantially at Right Angles To [fol. 26] The First Arm (mine). Thus, if we examine defendant's Exhibit Plaintiff's Latch in connection with the patent in suit we find in the Exhibit that the part designated 12 in the patent is as clearly shown in the model or Exhibit substantially at right angles to the projected or nose portion 9 of the operating lever 11. The function of the part 12 is that of riding over the inclined surfaces 18 of the keeper when the latch is in vertical position so as to throw the latch into horizontal or locking position. Taking up now defendant's exhibit Defendant's Latch in connection with the Schrader patent No. 1,575,647 we do not find this structure, but on the contrary do find that the operating lever and its complemental forwardly projecting nose has

formed integral therewith a cam *c*-1 termed in the Schrader patent as a riding surface which is arranged at an inclination to and forms an acute angle to the longest axis of the combined handle and forwardly projecting arm or nose. Naturally and obviously the patent in suit does not show any such structure more especially does not show the inclined inner cam surface as very plainly observed from the comparison of the two exhibits in question and in addition to this particular item in the latch it is to be noted that the function of this inclined member is that of coacting with a laterally extending lug or pin designates *b*8 in the Schrader patent; in other words, with a door in open position and the latch for example in a substantially vertical position closing of the door of a refrigerator or the like results in the angle member adjacent the pivot point or the handle, the hitting or abutting of said angle member against the pin *b*-8 and thereby automatically causing the latch member to assume a substantially horizontal locking position. I do not find this structure in plaintiff's latch which I find before me nor do I find this structure in the drawing of the patent in suit, nor do I find this structure recited in the specification or brought out in claim 1 of the patent in suit, therefore I would say in conclusion as regards claim 1 that the elements called for in said claim 1 cannot be found in defendant's latch.

Taking up now claim 2 I find that lines 121 to 122 inclusive of claim 2 bring out that the second arm which projects from the handle is adapted to ride against the Upper Outer Side Of The Keeper When The Door Is Closed. This means that the part designated 12 in the patent in suit in the closing of the door rides from the upper edge of the keeper which is designated in the patent in suit as at 18. In other words, if His Honor will take defendant's exhibit plaintiff's [fol. 27] latch, open the door and place the latch portion in vertical position and then slam the door shut he will see that the part 12 in the patent in suit rides over the part 18 in the patent in suit. If His Honor will then pick up defendant's exhibit defendant's latch, open the door and place the latch in vertical position and slam it he will see that the inclined member adjacent the pivot point of the latch never contacts with the upper part of the keeper but on the contrary engages and slides over the laterally extended pin

or lug formed integral with the keeper. Thus it is quite evident that defendant has a different mechanical structure from that disclosed in claim 2 of the patent in suit.

Taking up now claim 3 it is found in line 4 of page 3 of the patent in suit that this claim calls for means on the latch lever to engage with the keeper The Outer Sides thereof to swing the lever into engagement with the keeper at the inner side thereof when the door is closed. The elements brought out in this claim are practically no different from the elements brought out in claim 2 since in claim 2 the phraseology was The Upper Outer Side Of The Keeper and in claim 3 the only difference is that instead of saying the upper outer side of the keeper the terms employed are The Outer Sides. As clearly explained to the Court with regard to claim 2 there is nothing in defendant's structure which by any stretch of the imagination can be said to bring out a device in which there is means upon the latch lever to engage with the keeper upon the outer sides thereof. Defendant's entire structure is so arranged that the locking movement is procured by elements that in no sense of the word ride upon the top or outer sides of the keeper.

Taking up now claim 4 of the patent in suit and referring more particularly to lines 16 and 20 it is found that the claim particularly brings out that the keeper of the patent in suit has separate distinct outer portions and that one arm engages An Outer Portion And The Other Arm Engages Different Outer Portions. I do not find in defendant's exhibit defendant's latch any of the elements thus called for. I do not find that the arm or projection (or whatever term may be given to it) which is adjacent the pivot point of the latch, engages with and rides over, abuts or in any way contacts with the Outer Portion Of The Keeper.

Referring now to claim 7 it is urged that this claim to all intents and purposes is no different from the previously diagnosed claims and in line 52 it is found that the keeper is formed At Its Outer Sides for engagement, with a pair [fol. 28] of arms. In defendant's structure there are no elements which by any stretch of the imagination can be said to include a pair of arms for engaging the outer sides of the keeper."

The witness on being referred to Defendant's Exhibit, Defendant's Latch, pointed out that when defendant's latch is swung from its horizontal locking position forwardly the oblique cam near the pin rides upon the contiguous juxtaposed pin projecting laterally from defendant's keeper and tends initially to open defendant's door and stated that he did not find this construction in the plaintiff's patent in suit and that this construction was not disclosed in plaintiff's latch. At this point defendant's counsel offered in evidence all the patents, referred to by the witness during his direct deposition and the Examiner was requested to mark the same "Defendant's Exhibit" and the name and number of *of* the patent. Defendant's Counsel also offered in evidence a drawing marked "Defendant's Exhibit—Comparative Drawing." Defendant's Counsel offered in evidence two objects marked "Defendant's Exhibit—Plaintiffs' Latch" and "Defendant's Exhibit—Defendant's Latch."

Cross-examination:

On cross examination the witness stated Defendant's Exhibit, Plaintiffs' latch, was identical with the disclosure of plaintiffs' patent in suit, and the functional parts operate in the same manner. In the patent in suit beginning with the sentence in line 37, page 1, a primary object and purpose of the invention is set forth to the effect that the latch may be pivotally connected to the door and is automatically operative to engage with a retaining member or keeper fixed on the door casing when the door is closed irrespective of the vertical or horizontal position of the latch lever working as well in one case as the other. In the defendant's exhibit, defendant's latch, the same object is attained, but in a totally different manner from that shown in the patent in suit. The same mechanism in Defendant's latch which permits the latching irrespective of the position of the latch also functions to move upwardly or squeeze outwardly, as I would term it, the door of the refrigerator should the door in any — become tight through dampness. When defendant's exhibit, plaintiffs' latch, is held with the door and a jamb positioned vertical and with the latch engaging the keeper, the door being closed, when the door is opened by turning the latch about its pivot, the arm which

[fol. 29] projects from the pivotally mounted latch bar strikes against the upper concaved side of the head at the end of the keeper to pull the door open a short distance. The witness further explained the operation thus: "In plaintiffs' latch I find that the arm 12 is quite some distance removed from the pivot point so that when the arm 9 is freed from the keeper, the arm 12 is quite a long way from contacting with the surface 18 of the keeper. To bring the arm 12 in contact with the surface 18 requires the operator to move the handle all the way to vertical position which requires an extra or unnecessary movement. I admit that after all this extra effort the refrigerator door can be pried loose by having the arm 12 ride on the surface 18. In defendant's latch, Defendant's patent No. 1,575,647, the arm *c*7 does not engage the keeper but the arm *c*1 rides over the lug *b*3. In other words, simultaneously with the passing of the latch from the keeper the latch actually forces open the door for a slight distance without any effort upon the part of the person opening the door other than moving the handle." In both plaintiffs' and defendant's latches the latch part which is mounted on the door in the first instance includes the base member, an upwardly extending post and a laterally extending arm at the top of the post in both structures. A pivot point passes through the laterally extending arm and through the latch lever which is mounted between the arm and the base. The latch lever in both instances is pivotally mounted between its ends. The latch lever in each case includes a handle extending in one direction from the pivot. In plaintiffs' latch I would say that the forwardly extending arm which for the sake of illustration I would like to term a nose, is in substantial alignment with the handle but in defendant's latch I would not say that the nose was in substantial alignment because there is a marked difference between the longest axis of the handle and nose. In other words, assuming that the latch was in horizontal position I would say that the handle was in a plane above the plane of the nose. As I see the matter, defendant's latch is provided in immediate juxtaposition to the pivot point with an inclined or obliquely arranged arm. Both the inner and outer surfaces are inclined. When the latch is in horizontal position the inner, inclined surface is within I should say one-quarter of an inch of the lug

b8 on the keeper. This brings the left hand side of this particular inclined arm in vertical alignment with the vertical edge of the refrigerator door. In plaintiffs' latch I cannot find these parts. What I do find is an arm of sub- [fol. 30] stantially eliptical cross section. In other words, it looks very much like a vertical pin. This arm is quite some distance removed from the pivot point, is absolutely nowhere near the keeper, absolutely lacks the inclined or oblique member inner surface, shown in Defendant's latch; and as I see the matter, is a totally different structure, operates in an entirely different way, and as I said before, the two arms in my opinion are totally different.

On being asked if the two latch levers did not each have an arm which when the latch was in closed position extended vertically from the lever, that in plaintiffs' latch at a greater distance from the pivot than that of defendant's latch and the arm in plaintiffs' latch being longer vertically than the arm in defendant's latch, the witness replied: "I think when the term 'Arm' is applied to defendant's latch we are probably using a misnomer. I cannot reconcile the two parts you are referring to as being one and the same thing. There is not any question but what in plaintiffs' latch there is a vertical arm, but in Defendant's latch it is hard for me to say that an inclined, oblique object is vertical. Therefore, to that part of your question I would say 'no.' This inclined, oblique thing in defendant's latch extends tangently with respect to the pivot point, and in the direction of its longest dimension this inclined, oblique object is an acute angle to the plane of the door. In its narrowest dimension it may have a tendency to extend outwardly and upwardly but it is arranged at a decided inclination with respect to the handle and is arranged tangently with respect to the pivot point." On being asked if this inclined oblique member, or object, or arm of defendant should be increased in height, the latch being horizontal, the lug which projects from the keeper could be reduced in height, that is, the distance that it projects outwardly from the keeper, the witness replied: "As Defendant's latch is now made there is very little clearance between the inclined or oblique camming member carried by the handle and when the handle is thrown to its uppermost position the parts come very close together with respect to the keeper, and while it prob-

ably might be possible to extend the inclined member slightly and cut off a small fraction of the outer end of the lug any such change would have to be so infinitesimal as to almost be negative." The projecting part of the keeper in defendant's latch out from the lug, that is, the forwardly extending pointed part of the keeper and the major portion of this projecting member is necessary to the proper [fol. 31] function of defendant's latch, but so far as throwing it from a vertical to a horizontal position, it has no function, and functions only when it is desired to close the refrigerator door and the latch is in horizontal position. As to plaintiffs' claim 3, the witness stated: "I find that claim 3, and with particular reference to line 4, on page 3 of the patent in suit, calls for a particular coaction between the latch and the keeper. In other words, as I see the claim, and with particular reference to this part of the claim, the claim is limited by the phraseology 'the outer sides' so that the latch must coact with more than one of the outer sides of the keeper in order to function as called for in the last few lines of the claim, to wit, when the lever occupies either a vertical or horizontal position."

As to plaintiffs' claim 4, the witness stated: "The differences in this claim over claim 3, as I see it, is that whereas in claim 3 the term 'the outer sides' was used, in claim 4 the phraseology 'an outer portion' and further on 'a different outer portion' is used. As I see it, the outer sides in claim 3 includes more than one side, and claim 4 by using the terms 'outer portion' and 'different outer portion' bears out my theory. In so far as claim 7 is concerned it differs from claim 4 in the term 'at its outer sides' which is practically what I have outlined as to claim 3."

Upon being asked if the oblique portion, cam or arm in defendant's latch engages with the outer side of the lug which projects from the keeper in order to turn it from vertical to horizontal position, the witness replied: "The claims which I have just referred to are all drawn to and refer to the keeper and when the term 'the outer sides' is used, or the terms 'outer portion' or 'different outer portion,' the patentee meant the outer portion of the keeper. The outer portion of the keeper certainly is not that portion of the keeper which faces the edge of the refrigerator door

because this part of the keeper clearly must be the inner part of the keeper, and in Defendants' latch the lug projects from the inner part of the keeper and not the outer part of the keeper." Defendant's oblique arm contacts with the exterior surface of defendant's lug, but not with the outer sides of the keeper. The witness did not consider the striking against the outer side of the lug in defendant's device to be equivalent to plaintiffs' structure where the arm strikes the outer side of the keeper at a further distance out because the arm is positioned a further distance out. In defendant's device the lug is an integral portion of the keeper, and the part or nose of the keeper, that is, the outer point above said lug, has no function to turn the [fol. 32] lever from vertical to horizontal position in defendant's device. If that point were sawed off the part of the lug that is engaged by the oblique cam in defendant's device would not be at the outer portion of the keeper. Cutting off the forwardly projecting point of the keeper has nothing to do with the functioning of defendant's latch from vertical to horizontal position. If the lug in defendant's latch were missing obviously the defendant's latch might or might not function, but it probably would because the weight of the handle would bring it down into vertical position.

Upon being asked if Plaintiffs' and Defendant's latches were not direct mechanical equivalents, the witness answered: "(a) The two latches are mounted in similar fashion. (b) I should say that in so far as this part of the question is concerned most any refrigerator latch functions in about the same way as these two latches function, generally speaking, and the prior art is quite filled with very similar latches. (c) I answer the last part of your question in this manner: As I see Defendant's latch, and with especial reference to the parts you have just referred to in your question, that ingenuity is there shown and that the parts are not equivalent structures, and I feel confident in saying this because it is not my own personal opinion but the experts in the Patent Office who examined the patent application of Defendant, certainly must have thought that they were not equivalent structures, and granted the inventor a patent. Therefore, I reiterate that in my opinion, backed

by the Patent Office, I do not consider the parts equivalent structures."

In the British patent to Downing the arms *f'* and *f''* define a recess in which the pin A is received. In the German patent No. 232,851 the latch lever *b* is spring actuated by the spring *c*, and has an end with a cam surface to ride over the keeper *e* when the door is closed. The patent to Fritz No. 632,009 has a latch *a* pivotally mounted on a door, *x* engageable with a keeper *c* on the door casing *y*, and this liver is manually operated to open the door. The witness said that if the latch were in vertical position, slamming of the door would very likely cause the latch to engage the keeper, and believed that in any event the weight of the handle would tend to cause the latch to assume a horizontal position in the closing of the door, and certainly the slam of the door would cause it to move around its pivot point. In the latch of the Charles patent No. 702,185 the lever *c* is mounted on the door casing and the oblique members *h* and *i* on the door engage successively with the two prongs [fol. 33] *d* and *e* to turn the latch automatically from the position shown in Fig. 5 of this patent to a position where the lever will fall into the keeper 9. The witness did not know whether or not if the lever *c* were not permitted to fall beyond the position seen in Fig. 6 of the Charles patent, or a position slightly above such position, whether or not the one projection *b* and the one guide member *h* could be left off. The witness had seen the 1914 latch made by the Dent Hardware Co. having a swinging lever latch of the Charles type with a pin on the door engaging with a cam on the lever to automatically swing the lever which is mounted on the casing or cross and meeting edges of the door casing.

The arm J in the Raaths patent No. 1,022,872 is used for the purpose of pushing the gate open when the latch is operated and to unlatch the gate. The part B of the Ambrun patent No. 138,112 was a handle and that part of said handle extending to the left of the pivot when the drawing is horizontal is a fulcrum with a lever to aid in opening the door after the latch is unlocked.

The principle of the operation of the Hadka patent No. 743,716 is for the cam projection 18 to be engaged by the projecting end 8 of the latch lever and gradually turn said

projecting end 8 in a counter-lock-wise direction, referring to Fig. 1, until the part 6*x* having three sides 6*y* to be engaged by an arm of the spring 12, is turned so that one of said sides passes from the spring and another contiguous side engages with the spring.

When the construction of the patent to Blye No. 1,238,876 is operated to unlatch the door the handle at 7 is pulled outwardly, whereupon the door 13 moved from the position shown in Fig. 3 to that shown in Fig. 4, and the handle is retained by a spring pressure in its outer position. Then, when the door is closed the laterally turned end 16 of the arm 15 engages the cam on the projection 22 and automatically turns the lever back until such time as the line of force of the spring acting through the door 13 passes from one side to the other at the axis of the pivot 8.

In the Dent patent the auxiliary cam *f*3, best shown is Fig. 2, bears against the base plate of the supporting structure on which the latch lever is mounted when the latch is in lower, or vertical, or closed position.

Defendant's counsel then offered in evidence the mounted latch referred to in Mr. Kaiser's deposition, and the same was marked "Defendant's Exhibit Dent, 1901 latch."

Defendant's counsel also offered in evidence the various mounted latches referred to in the Kaiser and Newhard [fol. 34] depositions which were marked by the designations by which they were referred to in said depositions.

Redirect examination:

On re-direct the witness stated that Defendant's exhibit, Dent 1901 latch conformed to the Dent Patent No. 670,506, dated March 26, 1901. There was nothing novel in the item of the opening movement of both plaintiffs' and defendant's latches serving initially to open the door upon which the latch is mounted. The plaintiffs' keeper structure was devoid of novelty in view of the references disclosed in connection therewith and in view of the fact that the plaintiffs cancelled the claim covering the same. The plaintiffs' latch is provided with arms which are at right angles to one another and therefore must be located in the same rectalinear plane while defendant's latch has a pair of arms which are not located in a rectalinear plane, one being at an acute angle with respect to the other. The

structure defined in claim 5 of the patent in suit was found in the British patent to Downing patent No. 16,566, the German patent No. 232,851, and the U. S. Patent to Charles No. 702,185. The Patent Office held that Plaintiffs' original claim 7 which was cancelled from the application and rejected on prior patents, was old. Plaintiffs' lever construction consisting of a handle and bar member having right angled arms is also old so that the mere assembling of the two old devices broadly was not new at the time that the patent in suit was granted. The patent Examiner did not find or cite the patents collated and discussed with reference to Claim 5 of the patent in suit.

Henry P. Newhard

Henry P. Newhard, recalled, testified that in the device of Mr. Dent's earlier 1901 patent the lug on the latch rides on the top of the keeper and drops into a notch which is open at its top. Prior to the year 1920 the Dent Hardware Co. made and sold refrigerator latches wherein the lug on the latch member rode upon the bottom of the keeper and snapped into a notch on the underside thereof, as in Defendant's Exhibit Dent 1912 Latch, which was a practical, satisfactory latch and was sold in quite large numbers. There was no trouble in the latches of the Dent earlier 1901 patent and the Dent 1912 latch with the locking of the door [fol. 35] by reason of the handle catching in the way of the door opening. If the Dent 1912 latch should be in a straight, horizontal position and the door closed, the upper lug would hit an abutment of the underside of the keeper and throw the handle downwardly to a vertical position, and the underneath lug would ride in the bottom recess and lock, this handle being absolutely fool proof under all conditions.

Miles R. Newhard

Miles R. Newhard stated that he was assistant secretary of the Dent Hardware Co., having been employed by them since 1909. He had been around the factory of the

Dent Company since that time and was familiar with the various types of latches which they manufacture. He confirmed the testimony of Mr. Newhard, Sr. The Defendant's exhibit, Dent 1912 latch, was made in September, 1912, and lots of twenty-five dozen at various times, and a very large number, were sold, giving perfect satisfaction. This latch was fool proof and would lock readily, if it happened to be standing in a horizontal or vertical position. There is a demand at the present time for fasteners where the latch member is pivoted to the door jamb, as an order for one hundred and twenty-five thousand of this type has been filled for the Alaska Refrigerator Co.

Plaintiffs' Rebuttal

Basil R. Crampton, in rebuttal, testified that he was familiar with the latch offered in evidence as Dent 1901 Latch and had known of that latch for over twenty-five years as the Conroy Latch since Patrick Conroy of Philadelphia took out the original patent. The Conroy Patent 332,495 was offered in evidence. This latch was largely used but at this time three per cent would cover the amount involved in refrigerator latches today. Fifty per cent of the refrigerators made were using this Conroy Latch but defendant's Exhibit — plaintiffs' latch came out. The latch offered by defendant as Dent 1914 Latch was originally known as the Condit Fastener and is used to about the extent of eight per cent today, being used by the Alaska Refrigerator Company, McCray Refrigerator Company and the Dry-Kold Refrigerator Company. The eight per cent referred to would be in round numbers perhaps 200,000 latches. Plaintiffs had made other latches besides the swinging lever latch in suit and today are making just two [fol. 36] types of latches. Plaintiffs had made others in the past which are now off the market; one such latch was offered in evidence as Plaintiffs' Exhibit No. 3. Plaintiffs employed a catalogue to advertise their go-ds, the catalogue being marked Plaintiffs' Exhibit No. 4 and showing Plaintiffs' entire line, excepting a few little specials that it is not necessary to show in a catalogue. This cata-

logue contained a list of plaintiffs' customers on the last page. Plaintiffs offered a latch mounted on a door as plaintiffs' Exhibit No. 5 and a certified copy of the file wrapper and history of the last patent in suit as Plaintiffs' Exhibit No. 6.

Cross-examination:

The witness had been in the latch manufacturing business for a period of almost nine years, employing about 145 men, and manufactured a few kitchen cabinet latches on the principle of Plaintiffs' Exhibit No. 3, the balance being refrigerator latches. About eight per cent of the latches used were the Dent 1914 structure, there being other refrigerator latches besides these in evidence and there being other manufacturers besides the plaintiffs' and the Dent Hardware Company in this business. The witness was one of the inventors mentioned in plaintiffs' patent 1,385,102 and in the specifications thereof distinguished over the Condit Patent. At the time the patent in suit was filed, the Conroy and Condit type dominated the field.

Mr. Crampton originated the thumb portion on the lever and Mr. Winters, the automatic features which make it work automatically when you slam the door, the thumb portion of the lever being the right angle projection therefrom, and was considered an advance over the art at that time.

The two plaintiffs worked on the latch at the same time several years ago and it was very difficult to rem*me*ber just what each one did. Following a discussion between the Court and counsel and arguments by respective counsel, the Court rendered the following opinion:

The Court: Speaking of combinations and testing out identity of co-action and result, there isn't the silghtest doubt about the perfect identity of plaintiff's and defendant's devices in a legal sense. I am well satisfied to regard the Crampton patent as being an advance and as entitled to at least a range that will forbid the defendant's structure here. If upon this art it must be held that there [fol. 37] was no room for invention, it is pretty hard to reconcile the success which the plaintiff's structure has had with the attitude of the defendant, which brings in a patent of its own here, in which patent it still asserts it is in

an inventive field by introducing a slight modification over Crampton. I regard this as one of the cases in which, assuming that because of the condition of the art there may be debate upon the question of invention, the course of the plaintiffs structure in the art, the acceptance of it, can here be taken as furnishing strong support for the presumptive validity of the patent.

The plaintiff can take a decree upon that theory.

IN UNITED STATES DISTRICT COURT

ORDER APPROVING STATEMENT OF EVIDENCE

The annexed condensed statement of the evidence in the within entitled cause is hereby approved.

Dated June 27, 1927.

F. A. Geiger, District Judge.

[fol. 38] PLAINTIFF'S EXHIBIT No. 6

IN UNITED STATES DISTRICT COURT

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Department of Commerce, United States Patent Office

To all persons to whom these presents shall come, Greeting:

This is to certify that the annexed is a true copy from the records of this office of the File Wrapper and Contents, in the matter of the Letters Patent of Alexander F. Winters and Basil R. Crampton, Number 1,385,102, Granted July 19, 1921, for Improvement in Latches.

In Testimony Whereof I have hereunto set my hand and caused the seal of the Patent Office to be affixed, at the City of Washington, this fourth day of January in the year of our Lord, one thousand nine hundred and twenty-seven and of the Independence of the United States of America the one hundred and fifty-first.

Thomas E. Robertson, Commissioner of Patents. (Seal.)

Attest: D. E. Wilson, Chief of Division.

[fol. 39] 1920

Number (Series of 1915) (Ex'r's Book) 212
428891 Div. 20 73

Patent No. 1,385,102, Jul. 19, 1921.

Name: Alexander F. Winters and Basil R. Crampton, of Grand Rapids,
County of ——,
State of Michigan.
Invention: Latch.

Parts of Application Filed.

	Original	Removed
Petition,	Dec. 7, 1920	——, 191-.
Affidavit,	" ", 1920	——, 191-.
Specification,	" ", 1920	——, 191-.
Drawing 2 shts.,	" ", 1920	——, 191-.
Photo Copy,	——, 191-.	——, 191-.
First Fee, Cash, 1, $15,	Dec. 7, 1920	——, 191-.
" " Cert.,	——, 191-.	——, 191-.
Appl. filed complete	Dec. 7, 1920	——, 191-.
Examined and Passed for Issue	June 21, 1921	, 191
H. Wright,	Exr. Div. 20	Exr. Div.
Notice of Allowance	June 21, 1921	, 191
	By Commissioner.	By Commissioner.
Final Fee Cash 20	June 22, 1921	, 191
" " Cert.	, 191	, 191
Patented	Jul 19, 1921	, 191

Attorney Frank E. Liverance, Jr., Houseman Bldg., Grand Rapids, Mich.
2 Associate Attorney
(No. of Claims Allowed 7) Print Claim 1 in O. G. (Cl. 292-241)
3 Title as Allowed Latch
(In left-hand margin) Division of App., No. —, filed —— —, 191-.

[fol. 40] #2209

(Stamps:) $15— Rec'd Dec. 7, 1920, Ck. J C. C. U. S. Pat. Office. Serial No. 428,891. Paper No. 1, Application. 102. 5374.

Petition

To the Commissioner of Patents:

Your petitioners, Alexander F. Winters and Basil R. Crampton, citizens of the United States of America, residing at Grand Rapids in the County of Kent State of Michigan whose post-office address is C/o Winters & Stryker, Grand Rapids, Michigan pray that Letters Patent may be granted to them for improvement in Latch as set forth in the annexed specification.

And they hereby appoint Frank E. Liverance, Jr., of Grand Rapids, Michigan their Attorney with full power of substitution and revocation, to prosecute this application, to make alterations and amendments therein, to sign the drawings, to receive the patent, and to transact all business in the Patent Office connected therewith.

Signed at Grand Rapids, in the County of Kent and State of Michigan, this — day of ——, 1920.

Inventors' full name: Alexander F. Winters, Basil R. Crampton.

(25-cent U. S. Internal Revenue Stamp canceled.)

Specification

To all whom it may concern:

Be It Known that We, Alexander F. Winters and Basil R. Crampton,
citizens of the United States of America, residing at Grand Rapids,
in the County of Kent and State of Michigan
have invented certain new and useful improvements in

Latch* (ES);

and we do hereby declare the following to be a full, clear, and exact description of

* Matter in parenthesis inserted.

[fol. 41] the invention, such as will enable others skilled the art to which it appertains to make and use the same.

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This invention relates to a latch of the swinging lever type, particularly adapted for use on refrigerators though applicable in many other relations where a door is to be closed and held in closed position. The swinging Ex's 5. lever latch, or Amd't as it is better known, the *[Condit) [condit]† latch, is pivotally connected at one end to the door jamb or casing, allowing the door to be opened when the latch is thrown to an upper vertical position, and coming down across the meeting edges of the casing and door when swung to horizontal position, engaging with a cam member on the door to wedge the door tightly shut. This latch is a very servic* (E) able latch but is relatively hard to operate due to its attachment to the casing instead of the door, and the same is liable to drop to horizontal position in which case the door cannot be closed without first raising the lever to upper vertical position while, many times, the door is inadvertantly swung toward closed position and against the lever in its horizontal position with injury either to the lever or door or both.

In the present invention, it is a primary object and purpose to
[fol. 42] provide a latch which may be pivotally connected to the door
and which is automatically operated to engage with a retaining
member or keeper fixed on the door casing when the door is closed
irrespective of the vertical or horizontal position of the latch
lever, working as well in the one case as the other. A further
object of the invention is to construct a latch of few parts,
whereby it may be economically made and which will be durable
and efficient in service. Other objects and purposes will
appear as understanding of the invention is had from the follow-
ing description, taken in connection with the accom-panying
drawings, in which,
Fig* (ure) 1 is a front elevation showing the latch in closed
position and holding a door closed.

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Fig. 2 is a side elevation thereof.
Fig. 3 is an under plan view of the latch, the door and
adjacent portion of the casing therefor being in section.

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* Matter in parenthesis inserted.
[† Words in brackets erased in copy]

Fig. 4 is a view similar to Fig. 1 showing the door approaching closed position with the swinging lever in vertical relation to the door.

Fig. 5 is a side elevation thereof.

Fig. 6 is a front elevation showing the action on the swinging lever as the door approaches closed position after [fol. 43] said lever has been in horizontal position, and

Fig. 7 is a side view thereof.

Like reference characters refer to like parts in the different figures of the drawings.

The door 1 and the adjacent portion of the casing 2 against which the free vertical edge of the door comes in closing are shown fragmentarily, only enough being shown to disclose the attachment of the lever and keeper thereto. The lever is carrier by the door. A base 3, attached to the door by screws 4 or equivalent connecting means has an integral outstanding post 5 from which, at the outer end an arm 6 extends over and paralleling the base. The lever 7 is placed between said arm and the base and a pivot pin 8 passed through the same pivotally mounting the lever at a point between its ends. An arm 9 forming a part of the lever extends from the pivot and is adapted to cross the meeting edges of the door and casing when the door is closed and the lever is horizontal position, this arm passing under the keeper attached to the door casing. The

under side of the arm 9 is formed at an angle as indicated at 10
the purpose of which will later appear.
In the opposite direction the lever extends from the pivot and is formed into a handle 11 set out a distance from the
door to allow the passage of the fingers of the operator between

[fol. 44] 5377

it and the door. A short distance from the pivot an arm 12
is formed integral with the lever, being located substantially
at right angles to the arm 9. The under side of arm 12 when
the lever is vertically positioned is formed with a rounded
cam surface 13, as shown, the purpose of which will also
appear later.
The keeper comprises a base 14 attached to the casing 2
by screws 15 or like fastening means from which a post 16 extends
outwardly for a short distance terminating in a head 17 which
is extended downwardly for a distance below the lower edge of
the post. The head on its outer sides is formed with two curved
surfaces 18 and 19 which come to a point substantially at the
front and between the upper and lower ends of said head, while
on its inner side it is cut upwardly and inwardly at a slight
angle to the vertical, forming a wedging cam 20, as shown

The latch lever may be thrown to upper position, as shown
in Fig. 4, being stopped from going beyond such position by
engagement of the arm 9 with the lower shoulder 5ª made by post
5. It may also be carried to a horizontal position, being.
likewise stopped when it reaches such position by the upper
shoulder 5ª. When the door is moved toward closing position
with the lever vertically located, the cam side 13 of arm
[fol. 45] 12 strikes against the curved upper side 18 of lead 17, causing
the lever to be automatically swung toward the horizontal, and
bringing the arm 9 into place so as to pass under the lower
point of the keeper head so that it may engage at its outer side
against the wedging came side 20 of the head. It is apparent
that by giving the end of handle 11 o downward movement, the
door will be wedged tightly shut as the arm 9 moves upwardly
and against the incline 20. To open the door it is merely
necessary to grasp handle 11 and turn
Ex's Am'd't. it to upper position, *(thus) [this]† releasing the door, and the door may be opened at the same time
by pulling outwardly on the handle after arm 9 has disconnected

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from the keeper.
If the lever has dropped to horizontal position while

*Matter in parentheses inserted.

the door is open, the closure of the door and engagement of the
lever with the keeper is accomplished by merely swinging the
door shut, in which case as shown in Figs. 6 and 7, the arm
9 strikes with its inclined cam side 10 against the lower curved
side 19 of the head 17 of the keeper, causing the handle to be
automatically turned toward vertical position. This movement
[fol. 46] continues until the arm 9 passes by the lower point of the keeper
head 17 or, as usually occurs, the arm 12 comes into contact
with the head at the upper side 18, whereupon the lever is
actuated so as to bring the arm 9 under the depending portion
of the keeper, the same as before described when closing the
door with the lever in vertical position. In any case, the
latch lever engages with the latch keeper when the door is
closed irrespective of the position of the lever. This is a
feature of merit in the invention and one of particular value
from a practical standpoint when the latch is used on refrigerators.

This latch construction is very simple, consisting of but
three parts and a pivot pin, all of which may be readily cast
from metal or formed with proper dies from sheet metal. The
mounting of the lever on the door is of value as use of one hand

only is necessary for unlatching and drawing the door open.

The ability to close the door and latch it automatically, irrespective of the position of the latch lever insures against injury to the latch or door and also insures that the door will be latched when it is swung shut. All of these features combined in the latch structure make it one of exceptional merit..

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[fol. 47]

We claim:

1. In combination, a door and a casing therefor, a keeper attached to the casing comprising a base, an outstanding post and a head at the outer portion of the post, said head depending below the post and formed with upper and lower curved outer sides coming substantially to a point and with an inner upwardly and inwardly inclined side, a member attached to the door comprising a base, an integral outstanding post projecting from the base and a laterally extending arm at the upper end of the post paralleling the base, and a latch lever pivotally mounted between its ends between the said arm and base of said member, said lever having one arm formed with an under cam side extending from the pivot and adapted to be engaged under the depending portion of

the keeper, a handle portion extending in the opposite direction
from the pivot and another arm projecting from the handle portion
a distance from the pivot and lying substantially at right angles
to the first arm of the lever and likewise being formed with an
inner cam side, substantially as and for the purposes described.

2. In combination, a door and a casing therefor, a keeper attached to the casing including an outer head spaced
from the casing and formed with upper and lower curved outer
sides coming substantially to a point and with inner upwardly
and inwardly inclined side, a member secured to the door, and a
[fol. 48] latch lever pivotally mounted between its ends on said member,
said lever having one arm extended from the pivot adapted to
ride against the lower outer side of the keeper head when the
door is closed with the lever in horizontal position to automatically turn the lever to bring said arm back of the head, a handle
portion extending in the opposite direction from said pivot and
a second arm projecting from the handle portion at an angle to
the first arm and adapted to ride against the upper outer side
of the keeper when the door is closed with the lever positioned
vertically to throw the lever to horizontal position and automatically engage the first arm with the keeper back of said head,

substantially as described.

3. In combination with a door and casing therefor, of
a keeper attached to the casing and a latch lever pivotally
connected to the door and engag*(e)able with the keeper to hold the
door in closed position, of means on the keeper and means on
the latch lever to engage with the keeper on the outer sides
thereof to swing the lever into engagement with the keeper at the
Inner side thereof when the door is closed with the lever occupying either a vertical or a horizontal position, substantially as
described.

[fol. 49] 4. In combination with a door and casing therefor, of
a keeper attached to the casing and a latch lever pivotally
connected to the door and engag*(E)able with the keeper to hold
the door in closed position, of two arms on the latch lever
one of which is engaged with an outer portion of the keeper
when the door is moved to closing position to swing the lever
from a vertical position to a horizontal position and engage
the other arm under the keeper, and the other of which is
engaged with a different outer portion of the keeper when the

[*Words and figures enclosed in brackets erased in copy.]

door is moved to closing position and the lever is horizontal
to turn the lever upwardly toward vertical position or until
said other arm passes under and engages with the keeper to
hold the door closed, substantially as described.

5. In a latch of the character described, a supporting
member adapted to be attached to a door, and a latch lever pivot-
ally mounted between its ends there on, said lever including one
arm extending from the pivot, a handle portion extending in the
opposite direction from the pivot, and a second arm extending
per A. from the handle portion* (adjacent) a short distance from† the pivot and in
a direction substantially at right angles to the first arm,
substantially as described.

6. A latch containing the elements in combination defined
in claim 5, said arms on their inner sides being
[fol. 50] formed with cam
surfaces, substantially as described.

—6—

428891
7
5381

Per A.

---

7. A keeper for latches comprising a base, a post projecting outwardly from the base at the
upper portion thereof,
Keil,
Ward.
and a head to the post depending below the same and being substan-

*Matter in parentheses inserted.

tially triangular in outline, having an upper and a lower outer
side coming substantially to a point and an inner upwardly and
inwardly inclined side, substantially as described.

[Matter enclosed between rules erased in copy.]

*(7).) [8]† In combination, a door and a casing therefor, a keeper
attached to the casing, a latch lever pivotally mounted on the
door between its ends, one end of the lever being formed into
an operating handle and the other into a keeper en-engaging arm, a
second arm projecting from the handle portion of the lever a short
distance from its pivot and at an angle to the first arm, said
keeper being formed at its outer sides for engagement with the
respective arms when the lever is in horizontal and vertical
positions, respectively, as the door is closed, to automatically
operate the lever so that it will engage under the keeper when
the door is entirely closed, substantially as described.

—7—

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[fol. 51] In testimony whereof we affix our signatures.
Alexander F. Winters, Basil R. Crampton.

---

*Matter in parentheses inserted.
[† Figure enclosed in brackets erased in copy.]

Oath

STATE OF MICHIGAN,
County of Kent, ss:

Alexander F. Winters and Basil R. Crampton, the above named petitioners, being duly sworn depose and say that they are citizens of the United States of America, and residents of Grand Rapids in the County of Kent and State of Michigan; that they verily believe themselves to be the original, first and joint inventors of the improvement in Latch described and claimed in the annexed specification; that they do not know, and do not believe the same was ever known or used before their invention or discovery thereof, or patented or described in any printed publication in any country before their invention or discovery thereof, or more than two years prior to this application, or in public use or on sale in the United States for more than two years prior to this application; that said invention has not been patented in any country foreign to the United States on an application filed by them or their legal representatives or assigns more than twelve months prior to this application; and that no application for patent on said improvement has been filed by them or their legal representatives or assigns in any country foreign to the United States.

Alexander F. Winters, Basil R. Crampton.

Sworn to and subscribed before me this 1st day of December 1920. George Hollery, Notary Public, Kent County, Michigan. My commission expires Aug. 12, 1924.

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[fol. 52] (Stamp:) U. S. Patent Office, Apr. 15, 1921, Mailed

2—260

Div. 20, Room 179

Paper No. 2

Address only "The Commissioner of Patents, Washington, D. C.," and not any official by name.

All communications respecting this application should give the serial number, date of filing, title of invention, and name of the applicant.

LVW.
Wms.

Department of the Interior,
United States Patent Office,
Washington, April 15, 1921.

Frank E. Liverance, Houseman Bldg., Grand Rapids, Mich.:

Please find below a communication from the Examiner in charge of the application of Alexander F. Winters and Basil R. Crampton, for Latch, filed Dec. 7, 1920, Serial No. 428,-891.

Thomas E. Robertson, Commissioner of Patents.

Claim 7 does not patentably distinguish over the following patents:

Keil, 554,448, Feb. 11, 1896 (292-241);
Ward, 1,250,736, Dec. 18, 1917 (292-242);

and is rejected.

The remaining claims appear allowable.

In amending see the following art:

Dent, 670,506, Mar. 26, 1901 (292-241);
Hadka, 743,716, Nov. 10, 1903, and
Blye, 1,238,876, Sept. 4, 1917 (292-242).

H. Wright, Exr., Div. 20.

WEW.

421891
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[fol. 53] (Stamps:) Mail Room, Jun. 13, 1921, U. S. Patent Office. Serial No. 428,891. Paper No. 3. Patent Office, Jun. 14, 1921, Division 20.

A

Div. 20, Room 179

Alexander F. Winters and Basil R. Crampton. Ser. No. 428,891. Filed Dec. 7, 1920. Latch

Hon. Commissioner of Patents, Washington, D. C.

Sir: In response to the Office action of April 15, 1921, in the above case, amendment is made as follows:

Claim 5, line 6, cancel "a short distance from" and substitute —adjacent—.

Cancel claim 7.

Remarks

The rejected claim has been cancelled, primarily as the subject matter thereof is divisional when claimed in itself, and it is the intention of the inventors to file a divisional application thereon.

The amendment to claim 5 does not change the same in substance.

An early allowance is requested in view of the fact that no examination of any kind has to be made further.

Very respectfully, Winters and Crampton, by Frank E. Liverance, Jr., Attorney.

421891
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[fol. 54] (Stamp:) U. S. Patent Office, Jun. 21, 1921, Mailed

2—181

Div. 20

Address only The Commissioner of Patents, Washington, D. C.

Serial No. 428,891

LVW. Department of the Interior,
United States Patent Office,

Washington, June 21, 1921.

Alexander F. Winters and Basil R. Crampton.

Sir: Your Application for a patent for an Improvement in Latch filed Dec. 7, 1920, has been examined and Allowed.

The final fee, Twenty Dollars, must be paid not later than Six Months from the date of this present notice of allowance. If the final fee be not paid within that period, the patent on this application will be withheld, unless renewed with an additional fee of $15, under the provisions of Section 4897, Revised Statutes.

The office delivers patents upon the day of their date, and on which their term begins to run. The printing, photolithographing, and engrossing of the several patent parts, preparatory to final signing and sealing, will require about four weeks, and such work will not be undertaken until after payment of the necessary fee.

When you send the final fee you will also send, Distinctly and Plainly Written, the name of the Inventor, Title of Invention, and Serial Number as Above Given, Date of Allowance (which is the date of this circular), Date of Filing, and, if assigned, the Names of the Assignees.

If you desire to have the patent issue to Assignees, an assignment containing a Request to that effect, together with the Fee for recording the same, must be filed in this office on or before the date of payment of final fee.

After issue of the patent uncertified copies of the drawings and specifications may be purchased at the price of Ten Cents Each. The money should accompany the order. Postage stamps will not be received.

Final fees will Not be received from other than the appli-
[fol. 55] cant, his assignee or attorney, or a party in interest as shown by the records of the Patent Office.

Respectfully, Thomas E. Robertson, Commissioner of Patents.

Frank E. Liverance, Jr., Houseman Bldg., Grand Rapids, Mich.

(In left-hand margin:) ☞In Remitting the Final Fee Give the Serial Number at the Head of This Notice.

(In right-hand margin:) ☞Uncertified Checks Will Not Be Accepted.

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(Stamp:) $20 Rec'd Jun. 22, 1921. J. C. C. U. S. Pat. Office

2—327

Memorandum of Fee Paid at United States Patent Office

(Be careful to give correct Serial No.)

Serial No. 428,891. June 22, 1921.
Inventor: Alexander F. Winters and Basil R. Crampton.

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Patent to be Issued to Inventors.
Name of Invention as Allowed: Latch.
Date of Payment: June 22, 1921.
Fee: Final Government Fee ($20.00).
Date of Filing: Dec. 7, 1920.
Date of Circular of Allowance: June 21, 1921.

The Commissioner of Patents will please apply the accompanying fee as indicated above.

Frank E. Liverance, Jr., Attorney.

Send Patent to Frank E. Liverance, Jr., Houseman Bldg., Grand Rapids, Mich.

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[fol. 56] 2—254

Div. 20, Room 179.

Address only "The Commissioner of Patents, Washington, D. C.," and not any official by name.

All communications respecting this application should give the serial number, date of filing, title of invention, and name of the applicant.

Paper No. 4

Examiner's Amendment

Department of the Interior,
United States Patent Office,
Washington, —— —, ——.

Please find below a communication from the Examiner in charge of the application of Alexander F. Winters and Basil R. Crampton, Serial No. 428891, filed Dec. 7, 1920 for Latch.

Commissioner of Patents.

In accordance with the provisions of Order No. 2308, dated March 12, 1917, which reads in part as follows:

* * * * * * *

Obvious informalities in the application may be corrected by the examiner, but said corrections must be in the

form of an amendment, approved by the Principal Examiner in writing, placed in the file, and made a part of the record. The changes specified in the amendment will be entered by the clerk in the regular way.

* * * * * * *

The changes, hereinafter specified, are made by the examiner in the application above identified.

Should these changes not be satisfactory to the applicant, appropriate amendment may be proposed under the provision of Rule 78, provided the specification has not been printed.

The application has been amended as follows:

Page 1 line 5 change "condit" to Condit.

Page 3 line 31 change "this" to thus.

H. Wright, Exr. Div. 20.
421891
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[fol. 57] (Stamp.) Mail Room, Nov. 27, 1925, U. S. Patent Office

#5

UNITED STATES DISTRICT COURT, EASTERN DISTRICT OF WISCONSIN

Honorable Commissioner of Patents, Washington, D. C.

SIR: In compliance with the Act of February 18, 1922 (42 Stat. L., —), you are advised that there was filed on the 23rd day of November, 1925, in this court an action, suit, or proceeding No. 1688 C. D., entitled: Name: Alexander F. Winters, et al., Plaintiff, Address: Grand Rapids, Michigan, versus Name: Sanitary Refrigerator Company, Defendant, Address: Fond du Lac, Wisconsin, brought upon the following patents:

	Patent No.	Date of Patent	Patentee
1	1,385,102	Dec. 7, 1920	Alexander F. Winters and
2	.....	.....	Basil R. Crampton,
3	.....	.....	.....
4	.....	.....	.....
5	.....	.....	.....

In the above-entitled case, on the — day of ——, 192-, the following patents have been included by —— (insert amendment, answer, cross bill, or other pleading):

	Patent No.	Date of Patent	Patentee
1	.....	.....	.....
2	.....	.....	.....
3	.....	.....	.....
4	.....	.....	.....
5	.....	.....	.....

In the above-entitled case the following decision has been rendered or decree issued: ——.

In Witness Whereof I have affixed my hand this 24th day of November, 1925, at Milwaukee, Wisconsin.

F. C. Westfahl, Jr., Clerk of said Court.

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[fol. 58] Here follows printed specifications and drawings of United States Patent No. 1,385,102. See index.)

2—421

1920

Contents

1. Application, — papers.
2. Rej., April 15, 1921.
3. Amend't A, June 13, 1921.
4. Ex'r's Amend't, —— —, ——.
5. Notice of Suit, Nov. 27, 1925.
6. to 50. ——.

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(Endorsed:) Jan. 4, 1927. #228,553/26.

(Here follows Defendant's Exhibit Comparative Drawing, marked side folio pages 59 and 60.)

5980

FOLD OUT IS TOO LARGE TO BE FILMED

No. 232851

AUGUST KIEKERT

FIG. 1.

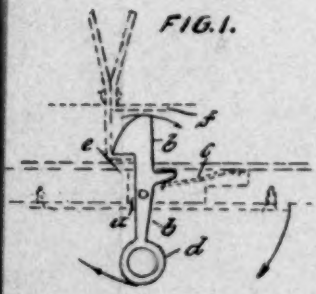


EXHIBIT
WING

DEFENDANTS PATENT.
No. 1,575,647.
AT. MARCH 9, 1926.
O. SCHRADER.

3.

FIG. 4.



[fol. 61] IN UNITED STATES DISTRICT COURT

INTERLOCUTORY DEGREE—Filed Feb. 24, 1927

The above cause coming on for hearing, on pleadings and proof of both parties and counsel for both parties having been heard, and after full consideration thereof, it is ordered, adjudged and decreed as follows:

1. That patent No. 1,385,102, issued July 19, 1921, for Latch, is a good and valid patent and defendant has infringed the same.

2. That an injunction shall issue out of and under the seal of this Court, restraining defendant, its officers, directors, confederates, agents and employees from manufacturing, selling or using, within the United States of America and its territories, any device which infringes said patent No. 1,385,102.

3. That the case be referred to Harry Kellogg, Esq., Master in Chancery of this Court, to take an account of defendant's gains and profits due to the infringement and plaintiffs' damages caused by the infringement, and report the same to the Court.

4. That plaintiffs recover their costs of suit to be taxed.

(Signed) F. A. Geiger, District Judge.

Approved as to form: John W. McMillan, Counsel for Defendant.

[File endorsement omitted]

[fol. 62] IN UNITED STATES DISTRICT COURT

PETITION FOR APPEAL, WITH SUPERSEDEAS—Filed Mar. 25, 1927

To the Honorable the Judges of the United States District Court for the Eastern District of Wisconsin:

The above named defendant, Sanitary Refrigerator Company, conceiving itself aggrieved by the decree made and entered in the above entitled cause on the 24th day of Feb-

ruary, 1927, wherein and whereby it was ordered, adjudged and decreed that the prayers of the bill of complaint herein be granted, hereby appeals from said decree of February 24th, 1927, to the United States Circuit Court of Appeals for the Seventh circuit, for the reasons specified in the assignment of errors filed herein and herewith, and prays that this appeal may be allowed; that a citation be granted directed to the above named plaintiffs, commanding them to be and appear before the United States Circuit Court of Appeals for the seventh circuit, and that a transcript of the pleadings, records, proceedings, papers and evidence upon which said decree was made, be filed with the Clerk of the United States Circuit Court of Appeals for the Seventh Circuit.

Defendant desiring to supersede the execution of that portion of the decree awarding costs to the plaintiff, an injunction and a reference to a master pending this appeal, hereby tenders bond in such amount as the Court may require for the purpose, and prays that with the allowance of the appeal a supersedeas be granted.

Sanitary Refrigerator Company, Defendant-Appellant, by E. Hayward Jaubanto, John W. McMillan, Attorneys.

[File endorsement omitted.]

[fol. 63] In United States District Court

Assignment of Errors—Filed Mar. 25, 1927

Now comes the defendant in the above entitled case, Sanitary Refrigerator Company, and says that in the record, proceedings and decree of this Court, entered in the above entitled cause on the 24th day of February, 1927. there is manifest error in this, to-wit:

1. The court erred in sustaining the bill of complaint and ordering a decree in conformity to the prayers of the bill.

2. The court erred in holding the Winters & Crampton patent No. 1,385,102, good and valid, as to all the claims thereof.

3. The Court erred in holding the claims of said Winters & Crampton patent No. 1,385,102, aforesaid, infringed by defendant's machine.

4. The Court erred in holding and adjudging that the defendant was not at liberty to use the apparatus of the Schrader patent No. 1,575,647.

5. The Court erred in finding the equities to be with the plaintiffs and in awarding them an injunction, accounting and costs as prayed for in the bill.

Wherefore, and for the diverse other errors in the record, proceeding and decree of the Court in this cause appearing, said defendant prays that the decree entered herein on the 24th day of February, 1927, be reversed.

Sanitary Refrigerator Company, by John Wm. McMillan and E. Hayward Fairbanks, Attorneys.

[Filed endorsement omitted.]

[fol. 64] Bond on appeal for $5000.00, approved and filed March 25, 1927, omitted in printing.

[fol. 65] In United States District Court

Before Honorable Ferdinand A. Geiger, District Judge

Order Allowing Appeal, with Supersedeas—Filed March 25, 1927

Upon Motion of counsel for defendant, it is Ordered that an appeal to the United States Circuit Court of Appeals, for the Seventh Circuit, from the interlocutory decree heretofore filed and entered herein on the 24th of February, 1927, be and the same is hereby allowed, and shall act as a supersedeas, and defendant also presenting its bond in the penal sum of five thousand ($5,000.00) Dollars, the same is hereby approved both as to form and surety.

It is further

Ordered, that the record on appeal shall consist of the papers and documents specified in the præcipe accompanying this appeal, and it is also Ordered That the Clerk transmit to the Clerk of the Court of Appeals for the Seventh Circuit, all of the exhibits in this cause offered on both sides, and that a citation be issued accordingly.

By the Court:

(Signed) F. A. Geiger.

[File endorsement omitted.]

[fol. 66] In United States District Court

Stipulation as to Condensed Record—Filed June 27, 1927

It is stipulated by and between counsel that the annexed condensed record has been approved by counsel for both parties and that an Order of Court directing the filing and approval of said record and extending time of filing said record to June 29th, 1927 may be entered by either side without further notice.

Frank E. Liverance, Jr., Counsel for Plaintiffs. E. Hayward Fairbanks, Counsel for Defendant.

June 27th, 1927.

On the stipulation herein field, it is ordered that the time to settle the condensed statement of evidence on appeal and file the appeal record be enlarged to June 29th, 1927.

(Signed) F. A. Geiger, District Judge.

[File endorsement omitted.]

In United States District Court

Præcipe for Transcript of Record—Filed June 27, 1927

To the Clerk of the Court:

Please prepare a transcript of the record in the above cause for the purpose of appeal allowed therein, and include in such transcript the following records:

Pleadings and Proceedings

1. Bill of Complaint.
2. Answer.
3. Condensed Statement of Evidence and Judge's decision.

[fol. 67] 4. Decree of February 27th entered on opinion.

5. Petition for appeal.
6. Assignment of errors.
7. Order allowing appeal.
8. Citation.
9. Bond on appeal.
10. Præcipe for transcript of record.
11. Stipulation in re transmittal by Clerk of the U. S. District Court to the Court of Appeals of copy of patent in suit, prior art patents offered in evidence, and other papers.
12. Clerk's certificate.

Plaintiffs' Documentary Exhibits

Originals

Exhibit No. 1. Patent in suit.

Exhibit No. 6. File wrapper, etc. Defendant's Patent in suit.

Exhibit Unnumbered: P. J. Conroy Patent December 15, 1885, No. 332,495, United States Patent Office.

Plaintiffs' Physical Exhibits

Exhibit No. 2. Mounted Plaintiffs' device.

Exhibit No. 3. Mounted Defendant's device.

Exhibit No. 4. Catalogue Winters & Crampton Mfg. Co.

Exhibit No. 5. Defendant's Latch with a portion of the keeper sawed.

Defendant's Documentary Exhibits

Originals

Defendant's Exhibit: Ambrun & Olfermann United States Patent No. 138,112, April 22, 1873.

Defendant's Exhibit: Keil Patent, United States Patent No. 554,448, dated February 11, 1896.

Defendant's Exhibit: Fritts United States Patent No. 632,009, dated August 29, 1899.

Defendant's Exhibit: United States Patent No. 670,506, issued to Dent March 26, 1901.

Defendant's Exhibit: United States Patent No. 702,185, issued to Charles June 10, 1902.

Defendant's Exhibit: United States Patent No. 743,716, issued to Hadka November 10, 1903.

[fol. 68] Defendant's Exhibit: United States Patent No. 871,269, issued to Gregg November 19, 1907.

Defendant's Exhibit: United States Patent No. 1,022,872, issued to Raaths April 9, 1912.

Defendant's Exhibit: United States Patent No. 1,117,709, issued to Schrader November 17, 1914.

Defendant's Exhibit: United States Patent No. 1,228,727, issued to Schrader February 16, 1915.

Defendant's Exhibit: United States Patent No. 1,170,685, issued to Schrader February 8, 1916.

Defendant's Exhibit: United States Patent No. 1,238,876, issued to Blye September 4, 1917.

Defendant's Exhibit: United States Patent No. 1,250,736, issued to Ward December 18, 1917.

Defendant's Exhibit: United States Patent No. 1,265,120, issued to Schrader May 7, 1918.

Defendant's Exhibit: United States Patent No. 1,385,102, already included in Plaintiffs' Exhibit, not requested.

Defendant's Exhibit: United States Patent No. 1,507,806, issued to Schrader December 29, 1925.

Defendant's Exhibit: United States Patent No. 1,567,867, issued to Schrader December 29, 1925.

Defendant's Exhibit: United States Patent No. 1,575,647, issued to Schrader March 9, 1926.

Defendant's Exhibit: British Patent No. 16,566, issued to Downing November 14, 1891.

Defendant's Exhibit: A German Patent No. 232,851, issued to Kiekert July 31, 1910.

Defendant's Exhibit: Comparative Drawing.

Defendant's Physical Exhibits

Defendant's Exhibit: 1901 Latch.

Defendant's Exhibit: 1912 Latch mounted on door and jamb.

Defendant's Exhibit: 1914 Latch mounted on door and jamb.

Defendant's Exhibit: Plaintiffs' Device, mounted, already referred to in Physical Exhibits in Plaintiffs' testimony not duplicated here.

Defendant's Exhibit: Defendant's Device, mounted, same as referred to in Plaintiffs' Exhibits, not duplicated here.

[fols. 69 & 70] Stipulation

Counsel stipulates that the documents and exhibits specified in the foregoing præcipe shall constitute the transcript of record for the purpose of appeal and that the physical exhibits may remain in the custody of counsel until required for the hearing.

Frank E. Liverance, Jr., Louis A. French, Attorneys for Plaintiffs. E. Hayward Fairbanks, John W. McMillan, Attorneys for Defendants.

The foregoing præcipe and stipulation in reference thereto are hereby approved and are so ordered.

(Signed) F. A. Geiger, District Judge.

[File endorsement omitted.]

[fol. 71] Exhibit in Evidence

(Here follow U. S. Letters Patent marked side folio pages 72 to 160, inc.)

72 73 A. F. WINTERS AND B. R. CRAMPTON. 69

LATCH.

APPLICATION FILED DEC. 7, 1920.

1,385,102. Patented July 19, 1921.

2 SHEETS—SHEET 1.

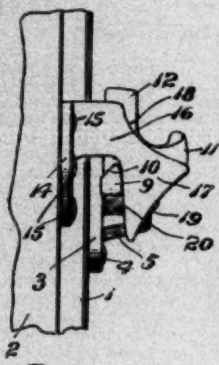


Fig. 2.

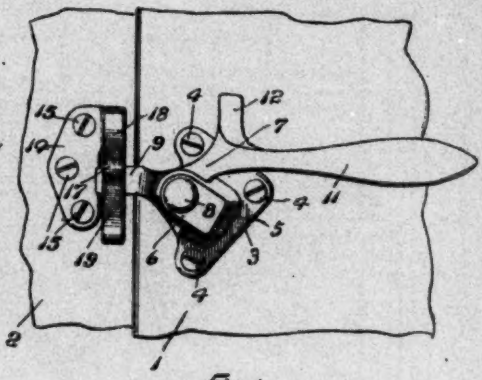


Fig. 1.

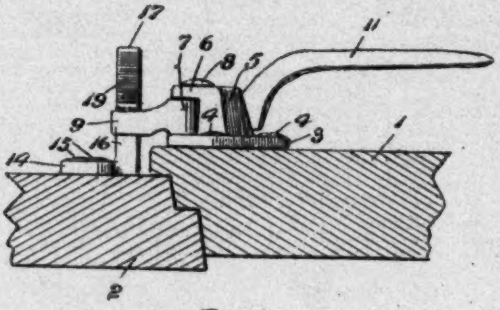


Fig. 3.

Inventors

Alexander F. Winters

Basil R. Crampton

By Frank E. Livermore, Jr.

Attorney

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A. F. WINTERS AND B. R. CRAMPTON.

LATCH.

APPLICATION FILED DEC. 7, 1920.

1,385,102.

Patented July 19, 1921.

2 SHEETS—SHEET 2.

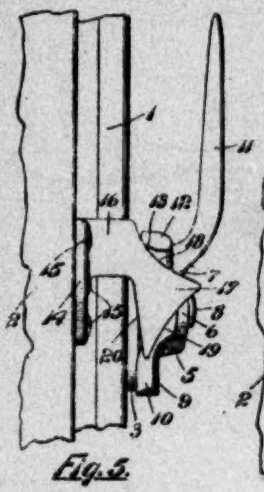


Fig. 5.

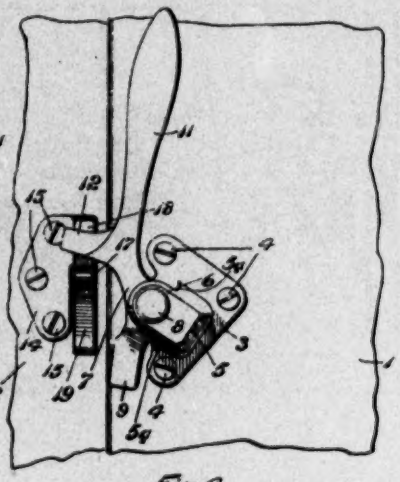


Fig. 4.

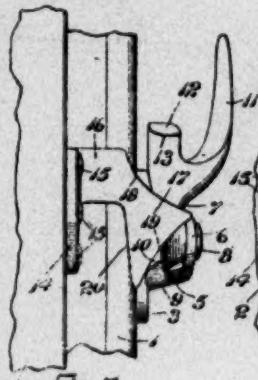


Fig. 7.

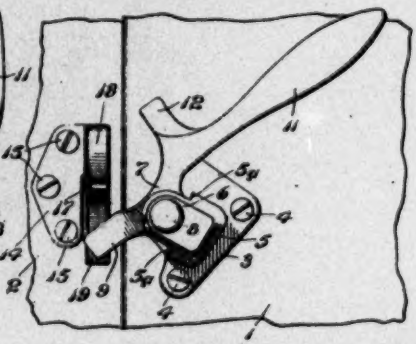


Fig. 6.

Inventors

Alexander F. Winters

Basil R. Crampton

By Frank E. Livermore Jr.

Attorney

UNITED STATES PATENT OFFICE. 75

ALEXANDER F. WINTERS AND BASIL R. CRAMPTON, OF GRAND RAPIDS, MICHIGAN.

LATCH.

1,385,102. Specification of Letters Patent. Patented July 19, 1921.

Application filed December 7, 1920. Serial No. 428,891.

To all whom it may concern:

Be it known that we, ALEXANDER F. WINTERS and BASIL R. CRAMPTON, citizens of the United States of America, residing at Grand Rapids, in the county of Kent and State of Michigan, have invented certain new and useful Improvements in Latches; and we do hereby declare the following to be a full, clear, and exact description of the invention, such as will enable others skilled in the art to which it appertains to make and use the same.

This invention relates to a latch of the swinging lever type, particularly adapted for use on refrigerators though applicable in many other relations where a door is to be closed and held in closed position. The swinging lever latch, or as it is better known, the Condit latch, is pivotally connected at one end to the door jamb or casing, allowing the door to be opened when the latch is thrown to an upper vertical position, and coming down across the meeting edges of the casing and door when swung to horizontal position, engaging with a cam member on the door to wedge the door tightly shut. This latch is a very serviceable latch but is relatively hard to operate due to its attachment to the casing instead of the door, and the same is liable to drop to horizontal position in which case the door cannot be closed without first raising the lever to upper vertical position while, many times, the door is inadvertently swung toward closed position and against the lever in its horizontal position with injury either to the lever or door or both. In the present invention, it is a primary object and purpose to provide a latch which may be pivotally connected to the door and which is automatically operated to engage with a retaining member or keeper fixed on the door casing when the door is closed irrespective of the vertical or horizontal position of the latch lever, working as well in the one case as the other. A further object of the invention is to construct a latch of few parts, whereby it may be economically made and which will be durable and efficient in service. Other objects and purposes will appear as understanding of the invention is had from the following description, taken in connection with the accompanying drawings, in which,

Figure 1 is a front elevation showing the latch in closed position and holding a door closed.

Fig. 2 is a side elevation thereof.

Fig. 3 is an under plan view of the latch, the door and adjacent portion of the casing therefor being in section.

Fig. 4 is a view similar to Fig. 1 showing the door approaching closed position with the swinging lever in vertical relation to the door.

Fig. 5 is a side elevation thereof.

Fig. 6 is a front elevation showing the action on the swinging lever as the door approaches closed position after said lever has been in horizontal position, and

Fig. 7 is a side view thereof.

Like reference characters refer to like parts in the different figures of the drawings.

The door 1 and the adjacent portion of the casing 2 against which the free vertical edge of the door comes in closing are shown fragmentarily, only enough being shown to disclose the attachment of the lever and keeper thereto. The lever is carried by the door. A base 3, attached to the door by screws 4 or equivalent connecting means has an integral outstanding post 5 from which, at the outer end an arm 6 extends over and paralleling the base. The lever 7 is placed between said arm and the base and a pivot pin 8 passed through the same, pivotally mounting the lever at a point between its ends. An arm 9 forming a part of the lever extends from the pivot and is adapted to cross the meeting edges of the door and casing when the door is closed and the lever in horizontal position, this arm passing under the keeper attached to the door casing. The under side of the arm 9 is formed at an angle as indicated at 10 the purpose of which will later appear.

In the opposite direction the lever extends from the pivot and is formed into a handle 11 set out a distance from the door to allow the passage of the fingers of the operator between it and the door. A short distance from the pivot an arm 12 is formed integral with the lever, being located substantially at right angles to the arm 9. The under side of arm 12 when the lever is vertically positioned is formed with a rounded cam surface 13, as shown, the purpose of which will also appear later.

The keeper comprises a base 14 attached to the casing 2 by screws 15 or like fastening means from which a post 16 extends outwardly for a short distance terminating in a

head 17 which is extended downwardly for a distance below the lower edge of the post. The head on its outer sides is formed with two curved surfaces 18 and 19 which come to a point substantially at the front and between the upper and lower ends of said head, while on its inner side it is cut upwardly and inwardly at a slight angle to the vertical, forming a wedging cam 20, as shown.

The latch lever may be thrown to upper position, as shown in Fig. 4, being stopped from going beyond such position by engagement of the arm 9 with the lower shoulder 5^a made by post 5. It may also be carried to a horizontal position, being likewise stopped when it reaches such position by the upper shoulder 5^a. When the door is moved toward closing position with the lever vertically located, the cam side 13 of arm 12 strikes against the curved upper side 18 of head 17, causing the lever to be automatically swung toward the horizontal, and bringing the arm 9 into place so as to pass under the lower point of the keeper head so that it may engage at its outer side against the wedging cam side 20 of the head. It is apparent that by giving the end of handle 11 a downward movement, the door will be wedged tightly shut as the arm 9 moves upwardly and against the incline 20. To open the door it is merely necessary to grasp handle 11 and turn it to upper position, thus releasing the door, and the door may be opened at the same time by pulling outwardly on the handle after arm 9 has disconnected from the keeper.

If the lever has dropped to horizontal position while the door is open, the closure of the door and engagement of the lever with the keeper is accomplished by merely swinging the door shut, in which case, as shown in Figs. 6 and 7, the arm 9 strikes with its incline cam side 10 against the lower curved side 19 of the head 17 of the keeper, causing the handle to be automatically turned toward vertical position. This movement continues until the arm 9 passes by the lower point of the keeper head 17 or, as usually occurs, the arm 12 comes into contact with the head at the upper side 18, whereupon the lever is actuated so as to bring the arm 9 under the depending portion of the keeper, the same as before described when closing the door with the lever in vertical position. In any case, the latch lever engages with the latch keeper when the door is closed irrespective of the position of the lever. This is a feature of merit in the invention and one of particular value from a practical standpoint when the latch is used on refrigerators.

This latch construction is very simple, consisting of but three parts and a pivot pin, all of which may be readily cast from metal or formed with proper dies from sheet metal. The mounting of the lever on the door is of value as use of one hand only is necessary for unlatching and drawing the door open. The ability to close the door and latch it automatically, irrespective of the position of the latch lever insures against injury to the latch or door and also insures that the door will be latched when it is swung shut. All of these features combined in the latch structure make it one of exceptional merit.

We claim:

1. In combination, a door and a casing therefor, a keeper attached to the casing comprising a base, an outstanding post and a head at the outer portion of the post, said head depending below the post and formed with upper and lower curved outer sides coming substantially to a point and with an inner upwardly and inwardly inclined side, a member attached to the door comprising a base, an integral outstanding post projecting from the base and a laterally extending arm at the upper end of the post paralleling the base, and a latch lever pivotally mounted between its ends between the said arm and base of said member, said lever having one arm formed with an under cam side extending from the pivot and adapted to be engaged under the depending portion of the keeper, a handle portion extending in the opposite direction from the pivot and another arm projecting from the handle portion a distance from the pivot and lying substantially at right angles to the first arm of the lever and likewise being formed with an inner cam side, substantially as and for the purposes described.

2. In combination, a door and a casing therefor, a keeper attached to the casing including an outer head spaced from the casing and formed with upper and lower curved outer sides coming substantially to a point and with an inner upwardly and inwardly inclined side, a member secured to the door, and a latch lever pivotally mounted between its ends on said member, said lever having one arm extended from the pivot adapted to ride against the lower outer side of the keeper head when the door is closed with the lever in horisontal position to automatically turn the lever to bring said arm back of the head, a handle portion extending in the opposite direction from said pivot and a second arm projecting from the handle portion at an angle to the first arm and adapted to ride against the upper outer side of the keeper when the door is closed with the lever positioned vertically to throw the lever to horisontal position and automatically engage the first arm with the keeper back of said head, substantially as described.

3. In combination with a door and casing therefor, of a keeper attached to the casing and a latch lever pivotally connected to the

door and engageable with the keeper to hold the door in closed position, of means on the keeper and means on the latch lever to engage with the keeper on the outer sides thereof to swing the lever into engagement with the keeper at the inner side thereof when the door is closed with the lever occupying either a vertical or a horizontal position, substantially as described.

4. In combination with a door and casing therefor, of a keeper attached to the casing and a latch lever pivotally connected to the door and engageable with the keeper to hold the door in closed position, of two arms on the latch lever one of which is engaged with an outer portion of the keeper when the door is moved to closing position to swing the lever from a vertical position to a horizontal position and engage the other arm under the keeper, and the other of which is engaged with a different outer portion of the keeper when the door is moved to closing position and the lever is horizontal to turn the lever upwardly toward vertical position or until said other arm passes under and engages with the keeper to hold the door closed, substantially as described.

5. In a latch of the character described, a supporting member adapted to be attached to a door, and a latch lever pivotally mounted between its ends thereon, said lever including one arm extending from the pivot, a handle portion extending in the opposite direction from the pivot, and a second arm extending from the handle portion adjacent the pivot and in a direction substantially at right angles to the first arm, substantially as described.

6. A latch containing the elements in combination defined in claim 5, said arms on their inner sides being formed with cam surfaces, substantially as described.

7. In combination, a door and a casing therefor, a keeper attached to the casing, a latch lever pivotally mounted on the door between its ends, one end of the lever being formed into an operating handle and the other into a keeper engaging arm, a second arm projecting from the handle portion of the lever a short distance from its pivot and at an angle to the first arm, said keeper being formed at its outer sides for engagement with the respective arms when the lever is in horizontal and vertical positions, respectively, as the door is closed, to automatically operate the lever so that it will engage under the keeper when the door is entirely closed, substantially as described.

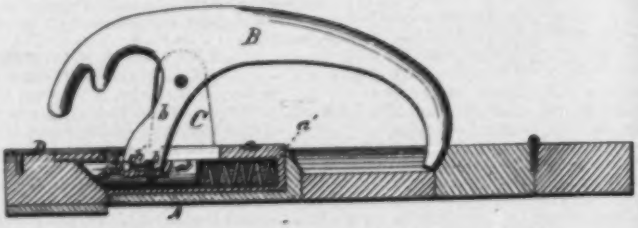
In testimony whereof we affix our signatures.

ALEXANDER F. WINTERS.
BASIL R. CRAMPTON.

J. AMBRUN & E. OLFERMANN.

Door-Latch Handles.

No. 138,112. Patented April 22, 1873.



Witnesses.

Jos. C. Hazelhurst

J. H. Hester

Inventors.

J. Ambrun & E. Olfermann

Edson Brothers

Attorneys

75

81=83

UNITED STATES PATENT OFFICE.

JULIUS AMBRUN AND ERNST OLFERMANN, OF LEAVENWORTH, KANSAS.

IMPROVEMENT IN DOOR-LATCH HANDLES.

Specification forming part of Letters Patent No. **138,112**, dated April 22, 1873; application filed March 15, 1873.

To all whom it may concern:

Be it known that we, JULIUS AMBRUN and ERNST OLFERMANN, residing in Leavenworth, in the county of Leavenworth and State of Kansas, have invented a new and useful Improvement in Door-Bolts, of which the following is a full, clear, and exact description, reference being had to the annexed drawing, in which is represented a view of our invention, with the lever in elevation and the bolt in section, the device being adjusted to a door set in a frame, which represents the upper surface of an ice-box or refrigerator.

This invention relates to that class of door-fastenings in which a sliding bolt is used; and the nature thereof consists in combining with such a bolt a lever or handle of such construction as to enable the bolt to be withdrawn from the socket or mortise in the door-jamb, and also to act as a pry to assist in opening the door, substantially as hereinafter more fully set forth.

To enable others to make and use our invention, we will proceed to describe it.

The sliding bolt A is confined within a cast-metal case, *a*, with lateral and end flanges, through which fastenings are inserted for securing the case to the door. The rear end of bolt A is pressed by a coiled spring, a^1, inclosed by the case *a*, and its upper surface is constructed with teeth a^2. B is a lever or handle, which is supplied upon its lower side with an arm, *b*, having teeth b^1, which take into the teeth a^2 of the bolt A for operating or throwing the latter inwardly. The lever B is fulcrumed upon posts or supports C, fastened to the top of the bolt-case *a* in any known way. The forward end of the lever B is caused to project or extend to a point opposite the door-jamb, and then curved or bent toward the same within a short distance thereof, as shown in the drawing. The object of this construction is to enable the lever or handle to act upon the door-jamb so as to pry the door open as the handle is grasped in unbolting the door.

This device can be used to great advantage in connection with ice-box and refrigerator doors.

To prevent the lever defacing or tearing the door-jamb in prying the door open, a metallic plate, D, is applied to the jamb. The rear arm of the lever is prolonged to enable it to be easily grasped and give it purchase.

Having thus fully described our invention, what we claim, and desire to secure by Letters Patent, is—

The combination, with the sliding bolt A, of the lever or handle B *b*, of such construction as to act upon the door-jamb and pry the door open when the bolt is thrown in or withdrawn from the jamb, substantially as specified.

In testimony whereof we have signed the foregoing specification in presence of two subscribing witnesses.

JULIUS AMBRUN.
ERNST OLFERMANN.

Witnesses:
GEORGE SCHMITH,
JOHN BAUM.

76
84

(No Model.)

P. J. CONROY.

DOOR OR SHUTTER FASTENER.

No. 332,495. Patented Dec. 15, 1885.

Fig. 1.

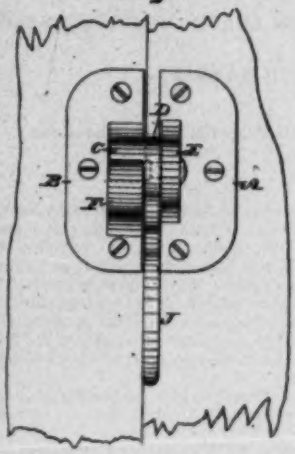


Fig. 2.

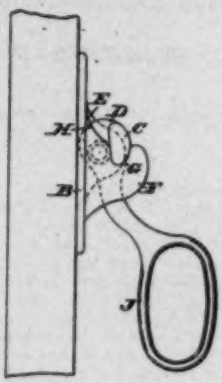
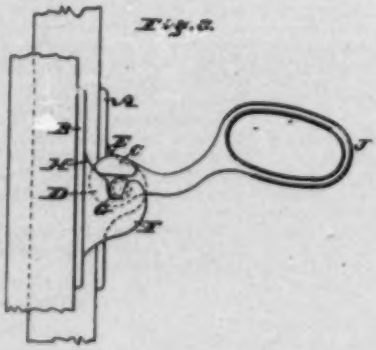


Fig. 3.



WITNESSES:

H. Rolle

H. Tuttle Jr.

INVENTOR.

P. J. Conroy

BY John A. Wiedersheim

ATTORNEY

85-87

UNITED STATES PATENT OFFICE.

PATRICK J. CONBOY, OF PHILADELPHIA, PENNSYLVANIA.

DOOR OR SHUTTER FASTENER.

SPECIFICATION forming part of Letters Patent No. 332,495, dated December 15, 1885.

Application filed April 20, 1885. Serial No. 162,842. (No model.)

To all whom it may concern:

Be it known that I, PATRICK J. CONBOY, a citizen of the United States, residing in the city and county of Philadelphia, State of Pennsylvania, have invented a new and useful Improvement in Door and Shutter Bolts or Fasteners, which improvement is fully set forth in the following specification and accompanying drawings, in which—

Figure 1 represents a front view of a door or shutter bolt embodying my invention. Figs. 2 and 3 represent side views thereof.

Similar letters of reference indicate corresponding parts in the several figures.

My invention consists of a door or shutter bolt, which may be tightly held in position and easily opened, as will be hereinafter fully set forth.

Referring to the drawings, A and B represent face-plates, which are attached, respectively, to a door and door-frame or to shutters, as required.

C represents a lug, which projects laterally from a head, D, and is somewhat oval in form, said head being eccentrically pivoted to a projection, E, on the face-plate A. From the face-plate B projects a catch, F, which has an opening, G, of the form of the lug C, and receives the same, and on the upper face of the catch F, back of the top of said opening, is an inclined or curved face, H, on which the lug C is adapted to ride, as will be hereinafter set forth. The head D has a handle, J, pendent therefrom, whereby it may be readily rotated.

The operation is as follows: In order to bolt the door or shutters, the handle J is moved outwardly and upwardly, whereby the lug C is raised, and is thereby permitted to pass over the front end of the catch F. Then, by lowering the handle, the lug enters the opening G, and, owing to the eccentric axis of the head D, said lug tightens against the walls of said opening, thus firmly holding the door or shutters in position. By raising the handle J the lug C, owing to the eccentric axis of the head D, emerges from the opening G in a direction upward and rearward, and then abuts against the face H of the catch, after the manner of a fulcrum, thus partly opening the door or shutters, and as the lug is now in its highest position (see Fig. 3) the door or shutters may be opened, said lug passing freely over the catch and the parts being disconnected, as is evident. This feature of the action of the lug on the face H is especially serviceable for doors, shutters, &c., that stick or open hard.

Having thus described my invention, what I claim as new, and desire to secure by Letters Patent, is—

1. A lug projecting laterally from a head having an eccentric axis, and a keeper or catch formed with an opening to receive said lug, combined and operating substantially as and for the purpose set forth.

2. A lug projecting from a head having an eccentric axis, in combination with a keeper or catch formed with an opening to receive said lug, and a face on which said lug bears when removed from the opening of said catch, substantially as described.

PATRICK J. CONBOY.

Witnesses:
JOHN A. WIEDERSHEIM,
A. P. GRANT.

78
(No Model.)
88

H. F. KEIL.
LATCH.

No. 554,448. Patented Feb. 11, 1896.

Fig. 1.

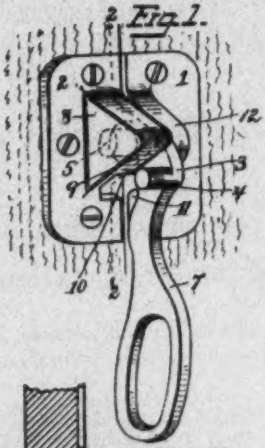


Fig. 6.



Fig. 5.

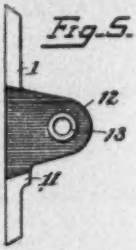


Fig. 2.

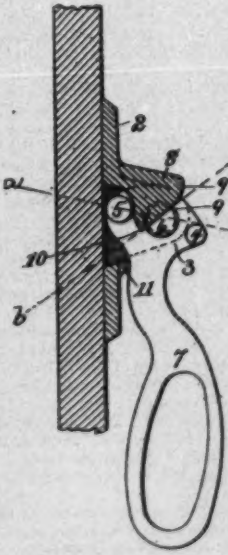


Fig. 3.

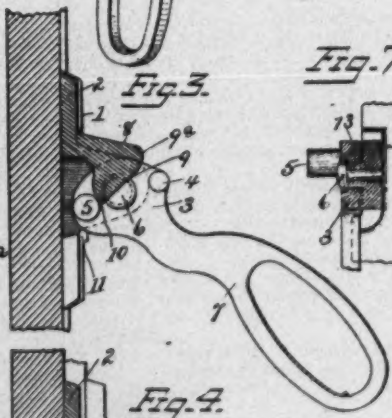


Fig. 7.

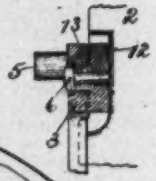
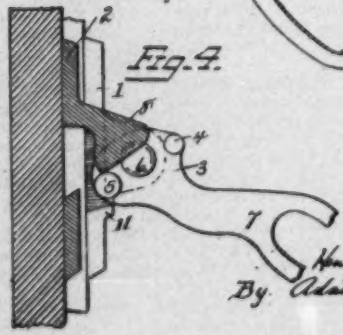


Fig. 4.



WITNESSES.
Albert Popking.
Henry C. Dewey.

INVENTOR.
Henry F. Keil
By Adam C. Schaff.
Attorney.

3537

UNITED STATES PATENT OFFICE.

HENRY FRANCIS KEIL, OF NEW YORK, N. Y.

LATCH.

SPECIFICATION forming part of Letters Patent No. 554,448, dated February 11, 1896.

Application filed November 15, 1895. Serial No. 569,092. (No model.)

To all whom it may concern:

Be it known that I, HENRY FRANCIS KEIL, a citizen of the United States of America, and a resident of New York city, in the county and State of New York, have invented a new and useful Improvement in Door Closing and Opening Devices, of which the following is a specification.

This invention relates to that class of door clamps and openers in which a lever having suitable studs to engage a keeper is utilized to force a door tightly to its seat when moved in one direction and to start or "pry" the door open when moved in the other direction, this type of invention being particularly adapted for refrigerator or other doors which require an absolutely-tight closure.

The object of my invention is to produce a simple device of the type mentioned, one which is certain in operation, of small cost, and which will both clamp and start the door in a direct horizontal plane without tendency to move the door in any direction other than that for which its hinges provide.

To this end my invention consists in the construction and combination of parts, substantially as hereinafter described and claimed.

In the accompanying drawings, Figure 1 is a perspective view of the complete device as applied to a door and door-casing. Fig. 2 is a vertical section in the plane of line 2 2 of Fig. 1, the parts being shown in the position when the door is locked. Fig. 3 is a similar view when the door is about to be clamped shut, the parts having also very nearly this position when the door is to be started from its seat. Fig. 4 is a similar view when the door has been entirely released from its clamped position and is ready to be swung open on its hinges. Fig. 5 is a detail view of the plate and lug for supporting the pivot of the handle-lever. Fig. 6 is a detail view of the head of the lever carrying the pins or studs. Fig. 7 is a section through the upper end of the lever and its support.

The plate 1, adapted to be attached to the door, is provided with a stud 12, having a cylindrical bearing 13 for the head 3 of the lever 7, which is pivoted on said bearing and held thereon by a rivet or bolt 6, said lever having two studs or pins 4 and 5 projecting laterally from the head 3 on opposite sides of the pivotal point and parallel with the axis of the pivot and nearly diametrically opposite each other, the pin 5 being preferably larger than the pin 4.

The plate 2, which is adapted to be attached to the door-casing, is provided with a nosing or keeper 8 having its under face inclined, as at 9, the outer end of this incline terminating in a substantially perpendicular face at the tip 9^a. The keeper 8 at its base back of the incline 9 is undercut to form a recess for the reception of the lever-pin 5, the edge wall of this recess being preferably cam-shaped, as at 10. By "cam-shaped" I mean that the wall 10 of the recess is not concentric with the center of the pivot-pin 6 when the door is shut or nearly so.

At 11 is indicated a shoulder or stop to limit the inward movement of the lever 7, as shown most clearly in Fig. 2.

In operation, when the door is pushed inward the pin 5 rides down the incline 9 of the keeper, as indicated in Fig. 4, and automatically lifts the handle end of the lever and finally assumes about the position shown in Fig. 3. A downward and inward push on said handle causes the pin 5 to ride up over the cam 10 to the position shown in Fig. 2, and thus firmly clamps the door in its casing. When the door is to be opened, an outward pull of the handle first carries the parts back to a position where the pin 4 will engage the lower part of the substantially perpendicular face 9^a, the pin 5 being at the same time carried down below the cam 10. Further movement in this direction carries the pin 4 up over and to a slight degree along the face 9^a, and thus forces or "pries" the door outward from its seat in a direct horizontal plane. It will be understood that if the incline 9 were continued to the tip of the keeper the pin 4 would strike said incline, and the movement of the lever in an outward direction would tend to force the door downward and jam it against the sill of the casing.

In Fig. 2 the line *a a* is drawn to indicate how far I prefer to locate the pin 4 below the line of the centers of pivot 6 and pin 5, and I will now explain the reason for this location. In the first place the plane of movement of pivot 6 should be such as to intersect the incline 9 of the keeper at a point about or a little

below the center of that incline, in order that when the door is being closed the pin 5 will ride down the incline and then start up behind the keeper, and the angle of the incline should be about as shown by the line *b b* in Fig. 2, in order that the lever may automatically operate as just described. Now if the center of pin 4 was located on the line *a a* the said pin would strike the incline, when opening the door, before the pin 5 had passed down far enough to clear the lower end of the cam 10. Therefore the said pin 4 is located below the line *a a*, substantially as shown and described.

Having now described my invention, what I claim is—

In a door-latch, the combination of a keeper or hook having a substantially perpendicular face and inclining downwardly and rearwardly therefrom and provided with a recess back of said inclined portion, and a lever having a head provided with a stud 5 for engaging under the keeper in the recess thereof and a stud 4 for impinging on the said perpendicular face of the keeper, whereby the door is drawn outward directly in a line at right angles to its face and thereby prevent crowding of the door against the upper or lower part of the door-frame, said studs being parallel with the axis of the pivot of the lever.

In testimony that I claim the foregoing as my invention I have signed my name, in presence of two witnesses, this 30th day of October, 1895.

HENRY FRANCIS KEIL.

Witnesses:
JOHN WERNER,
JAS. KATSCHE.

92

81

No. 632,009.

Patented Aug. 29, 1899.

A. D. FRITTS.

FASTENER FOR DOORS.

(Application filed June 17, 1898.)

(No Model.)

Fig. 3.

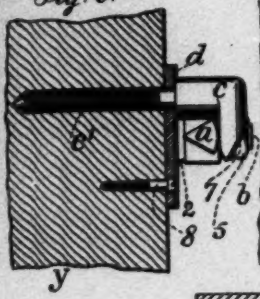


Fig. 1.

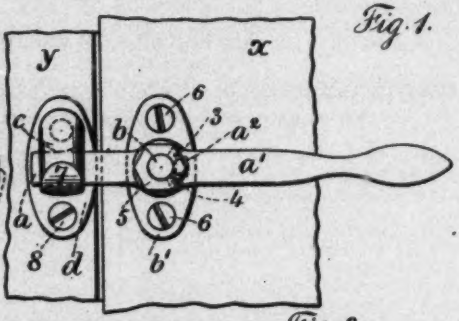


Fig. 2.

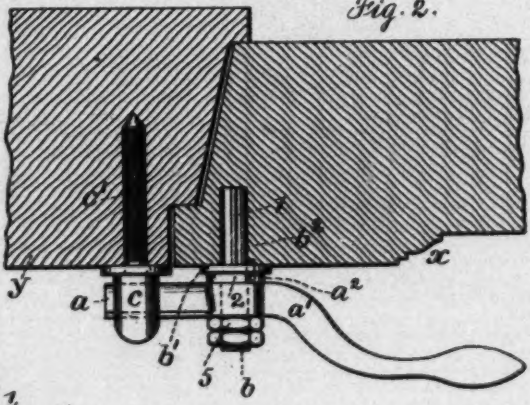


Fig. 4.

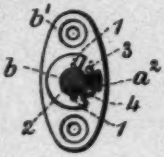
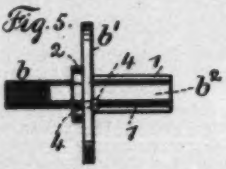


Fig. 5.



Witnesses:
J. Stair
Chas. E. Smith

Inventor:
Atwood D. Fritts
per L. W. Serrell & Son
Attys

UNITED STATES PATENT OFFICE.

ATWOOD D. FRITTS, OF HOBOKEN, NEW JERSEY.

FASTENER FOR DOORS.

SPECIFICATION forming part of Letters Patent No. 632,009, dated August 29, 1899.

Application filed June 17, 1899. Serial No. 720,884. (No model.)

To all whom it may concern:

Be it known that I, ATWOOD D. FRITTS, a citizen of the United States, residing at Hoboken, in the county of Hudson and State of New Jersey, have invented an Improvement in Fasteners for Doors, of which the following is a specification.

My invention relates to new and useful improvements in fasteners for doors, especially fasteners adapted for use upon the doors of refrigerators and ice-boxes; and the object of my invention is to so construct the parts as to make them adapted for use in either a right or left handed position, besides constructing the parts in a strong, substantial, and simple manner for use.

In carrying out my invention the latch is provided with a handle extension in line with the latch, and the latch is adapted to be used at the right hand or at the left hand, and the catch which is engaged by the latch can be used regardless of the direction in which the latch stands to the catch. The end of the latch is made with opposite inclines or triangular, so as to act against the inclined face of the catch and operate automatically in closing the door.

I provide a changeable stop for limiting the movement of the latch as the handle end of the latch descends by gravity, and this stop can be changed in its position, as said position is determined according to whether the latch is used right-handed or left-handed. I also provide means for preventing the stem of the latch turning or gradually loosening, and the catch is made with a screw-stem that is separate from the plate employed in connection therewith, the plate being secured to the wood of the refrigerator or ice-box, and the stem of the catch passing through a hole in the plate into the wood firmly secures the catch in place, so that the action of the latch in connection therewith does not disturb the catch.

The features of my improvement are more particularly hereinafter described.

In the drawings, Figure 1 is an elevation representing my improvement. Fig. 2 is a plan with the door and casing in section. Fig. 3 is a vertical section of the door-casing and partial elevation of the parts shown in Fig. 1. Fig. 4 is an elevation of the stem-plate and a section through the axis connected therewith and through the projection on the rear of the handle, and Fig. 5 is a side elevation of the parts shown in Fig. 4.

The latch a and its handle extension a' are in one continuous piece in line with each other in elevation, the handle extension being much heavier than the latch a, and the latch is preferably triangular in cross-section, with inclined faces adapted to act upon the catch as the door is closed. The latch and handle extension normally occupy a horizontal position, and they can be used either at the right hand or at the left hand with equal facility. At the rear of the latch is a projection a^3, coming adjacent to the axis b, upon which the latch is pivoted. In making the parts I prefer to make the axis b, the plate b', and the stem b^2 either integral or so permanently connected that they are practically inseparable.

The stem b^2 is provided with two ribs 1 on opposite sides, and said stem is to be driven into a hole made in the door x of the refrigerator or ice-box. These ribs prevent the stem turning accidentally. I provide a boss 2 on the face of the plate b'. This boss on one side is cut away down to the face of the plate, as shown in Fig. 4, and the plate at this point is provided with two screw-holes 3, in one of which is inserted the screw 4, the head of the screw being on the rear of the plate. The latch a upon the axis b is held by clamping-nuts δ, and the plate b' and connected parts are secured to the door x by the screws 6.

The projections a^3 on the rear of the latch comes against the screw 4 when the parts are in a horizontal position at either the right or left hand, and when the handle extension is gripped and raised and the latch a depressed the projection a^3 stops against one end of the boss 2 of the plate b', so that the movement of the handle is limited between these two points. The catch c is made with a long screw-stem c' and an inclined outer face 7, and the plate d is provided with a hole for said screw-stem and with another hole for an ordinary wood-screw 8. The parts are made thus because greater strength is thereby obtained than would be the case if the catch

was made as a part of the plate and the plate was held to the casing *y*, as usual, by two ordinary wood-screws.

It will be noticed from Figs. 1 and 2 that the inclined face 7 of the catch starts above the center line of the latch *a*. Consequently when the door is closed the angular edge of the latch *a* strikes the face of the incline and moves down the same, swinging the latch and the handle extension, and one inclined face of the latch passes beneath the lower end of the catch, and thereafter the weight of the handle extension may raise the latch up within the catch to hold the door, or force may be applied, and the curved face of the latch acts as a wedge against the catch to insure the closing of the door.

To open the door, the latch is swung on the axis *b*, the handle extension being moved as far upward as it will go, the distance being limited by the projection a^3 coming against the boss 2. In the elevated position a pull opens the door. As shown, the latch operates by the right hand. Should it be desirable to reverse the same, no change is needed in the latch and handle extension nor in the parts of the catch and its plate or in the manner of connecting the same, and the only change needed is to remove the screw 4 from the screw-hole in which it is shown and place it in the other hole and reverse the position of the parts, so as to provide for moving the projection on the latch between the screw in its new position and the other end of the boss 2, and when reversed the operation of the parts is precisely the same as has been described in connection with the position shown.

I claim as my invention—

1. In a door-fastener, the combination with the latch and the catch, of an axis for the latch, a plate and stem integral therewith, the stem having opposite ribbed edges and the plate holes for screws by which the same is secured to a door and the stem prevented from accidentally turning, substantially as set forth.

2. In a door-fastener, the combination with the catch and the latch, of an axis upon which the latch is pivoted, a stem entering the door and a plate connected to the stem and axis, and a boss upon the plate cut away upon one side down to the plate and provided with two screw-holes, a screw 4 adapted to be placed in either of said holes, and a projection upon the rear of the latch adapted to move between the screw in either position and the edge of the boss to limit the swing of the latch, substantially as set forth.

3. In a door-fastening, the combination with the catch, of a latch and a handle extension thereto in line, an axis and plate to which the latch is pivoted in either a right or left hand position, a stop upon the latch and an adjustable stop connected to the plate for limiting the movement of the latch in either position, substantially as specified.

4. In a door-fastener, the combination with a latch and gravity handle extension and an axis and stem adapted to be connected to the door and upon which the latch swings, of a plate adapted to be screwed to the casing, a catch separate from the plate and having a long screw-stem passing through a hole in the plate and adapted to enter the casing in securing the catch and the plate to the casing, substantially as set forth.

5. In a door-fastener, the combination with a latch triangular in cross-section and having inclined faces and a gravity handle extension thereto, and an axis and stem adapted to be connected to the door and upon which the latch swings, of a plate adapted to be screwed to the casing, a catch separate from the plate and having a long screw-stem passing through a hole in the plate and adapted to enter the casing in securing the catch and the plate to the casing, the said catch having an inclined face whose surface extends above the center line of the latch and upon which inclined face the latch strikes and automatically moves down the same so that the latch passes below the lower edge of the catch and rises by gravity, substantially as set forth.

Signed by me this 14th day of June, 1899.

ATWOOD D. FRITTS.

Witnesses:
GEO. T. PINCKNEY,
S. T. HAVILAND.

96

No. 670,506. Patented Mar. 26, 1901.

H. H. DENT.

LATCH.

Application filed Nov. 28, 1900.

(No Model.)

Fig. 1.

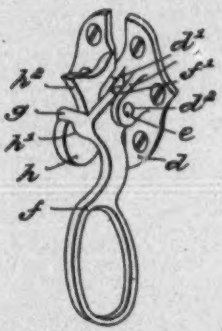


Fig. 2.

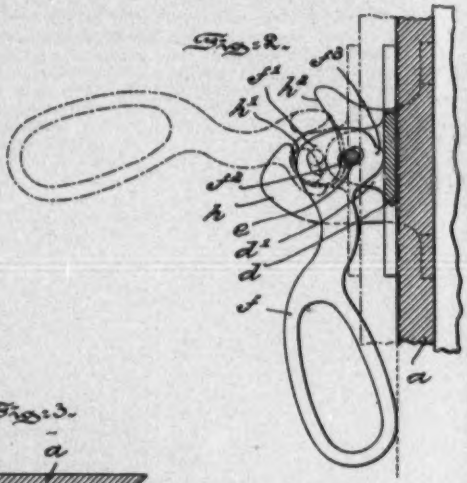


Fig. 3.

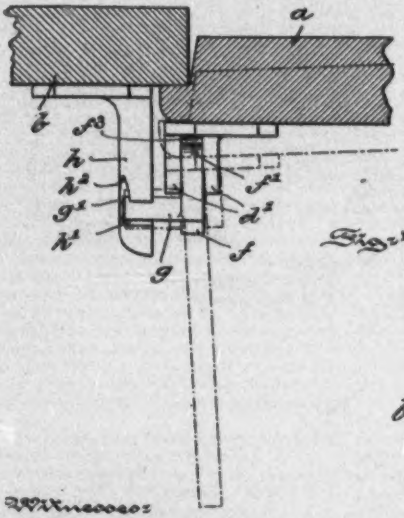
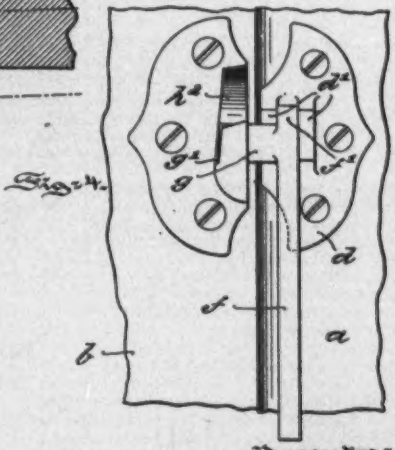


Fig. 4.



Witnesses:
Wilhelm Vogt
Thomas M. Smith.

Inventor:
Henry H. Dent,
by J. Walter Taylor
Attorney.

UNITED STATES PATENT OFFICE.

HENRY H. DENT, OF ALLENTOWN, PENNSYLVANIA, ASSIGNOR TO THE DENT HARDWARE COMPANY, OF FULLERTON, PENNSYLVANIA.

LATCH.

SPECIFICATION forming part of Letters Patent No. 670,506, dated March 26, 1901.

Application filed November 23, 1900. Serial No. 37,073. (No model.)

To all whom it may concern:

Be it known that I, HENRY H. DENT, a citizen of the United States, residing at Allentown, in the county of Lehigh and State of Pennsylvania, have invented certain new and useful Improvements in Latches, of which the following is a specification.

My invention has relation to that class of door closers and openers wherein a pivoted lever or latch is provided with a lug or stud adapted to engage in a keeper to force the door tightly shut when operated in one direction and to start the door open when moved in the opposite direction, and in such connection it relates to the construction of the lever or latch its fulcral support, and the keeper for the latch.

The principal objects of my invention are, first, to so pivot the lever or latch in the plate or seat supporting the same that in the act of clamping the door to its seat strain upon the pin or bolt forming the pivot or fulcrum is removed, and, second, to so fashion the keeper that in the opening of the door and before disengagement of the latch from the keeper the door is pried open by the movement of the latch within the keeper.

The nature and scope of my invention will be more fully understood from the following description, taken in connection with the accompanying drawings, forming part hereof, in which—

Figure 1 is a perspective view of a latch and its keeper embodying main features of my invention, the same being disengaged from the door and the door jamb or seat. Fig. 2 is a vertical sectional view of the latch and adjacent parts, showing in full and dotted lines the operative and inoperative positions of the lever-fastener of my invention for refrigerator and other doors. Fig. 3 is a top or plan view of the latch and keeper, with the door and jamb illustrated in cross-section; and Fig. 4 is a front elevational view of Fig. 3.

Referring to the drawings, *a* represents the door, and *b* the jamb or seat. Upon the door *a* is suitably secured a plate *d*, having two projecting studs d^2, in each of which is formed an opening d^3 for the reception of a pin or bolt *e*, which forms the pivotal support or fulcrum for the latch or lever *f*. This latch or lever *f* has a cam or eccentric *f'* fitting between studs d^2 and provided with an obliquely-arranged slot f^2, through which the pin or bolt *e* passes to unite the lever or latch *f* to the plate *d*. On the inner face of the cam-plate *f'* is formed an auxiliary cam f^3, adapted as the latch or lever *f* is pressed downward to press inwardly against the base of the plate *d*, as illustrated in Fig. 2. Upon the outer portion or face of the cam *f'* is formed a laterally-projecting lug *g*, adapted to fit into a recess *g'* of the keeper *h*. The keeper *h* is provided with two oppositely-arranged wings *h'* and h^2, of which one, *h'*, is concaved to form the seat for the lug *g* and the other, h^2, is upwardly and forwardly made to project to lie in the path of the lug *g* when this lug is elevated out of the seat in the wing *h'*, as clearly illustrated in dotted lines in Fig. 2 of the drawings.

The operation of the device is simple. When the door is pushed shut, the lever *f* is depressed to force the lug *g* into the seat *g'* of the wing *h'*. When now the lever *f* is still further depressed, the cam *f'* of the lever *f* is forced inward by the weight *h'* of the keeper and by reason of the slotted connection with the pin or bolt *e* is permitted to bear directly upon the plate *d* of the door *a*. The door will thus be tightly jammed into its seat without strain upon the pivot *e* of the latch. When the door *a* is to be opened, the latch *f* is thrown upward until the lug *g* strikes upon the wing h^2, when the door will be initially pried or forced open by the impingement of the lug *g* upon the said wing. By pulling upon the lever *f* the door will then come open easily and without any oblique pressure upon the door while in its seat.

Having thus described the nature and objects of my invention, what I claim as new, and desire to secure by Letters Patent, is—

1. A lever or latch provided with a laterally-projecting lug and a cam on its body provided with a slot, a keeper, wherein the lug is adapted to enter, a plate provided with two studs between which the lever or latch is adapted to be pivoted, and against which plate the cam is adapted to bear, and a pin or bolt passing through the two studs and the slotted body of the lever or latch to form the

pivotal support for the lever in said plate, all arranged so that when the lug engages the keeper and the cam bears against the plate, the strain upon the pivot is relieved, substantially as and for the purposes described.

2. In a fastening device of the character described, a plate provided with two projecting studs, a lever provided with a cam or body pivoted between said studs and bearing upon said plate, said body being slotted, and a pin passing through the studs and the slot of said body to form the fulcral support for the lever in the studs, substantially as and for the purposes described.

In testimony whereof I have hereunto set my signature in the presence of two subscribing witnesses.

HENRY H. DENT.

Witnesses:
CHAS. E. SHECKLER,
ALEX. N. ULRICH.

100 = 101

No. 702,185. Patented June 10, 1902.

A. CHARLES.

LATCH.

(Application filed Jan. 29, 1901.)

(No Model.) 2 Sheets—Sheet 1.

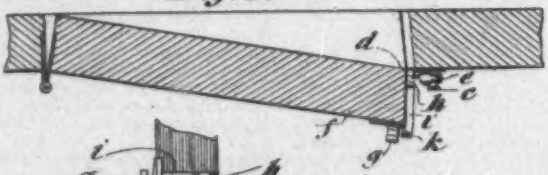
Fig. 1.



Fig. 2.



Fig. 3.



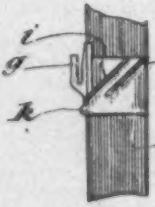


Fig 4.

Witnesses
Thomas Hillgoarth
F. Van Dusen Grinnell

Inventor
Antoine Charles
by Alexander & Co
Attorneys

102

No. 702,185. Patented June 10, 1902.

A. CHARLES.

LATCH.

(Application filed Jan. 28, 1901.)

(No Model.) 2 Sheets—Sheet 2.

Fig. 5.

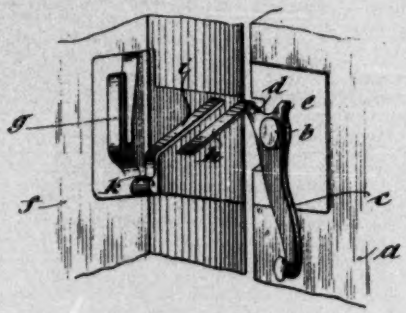


Fig. 6.

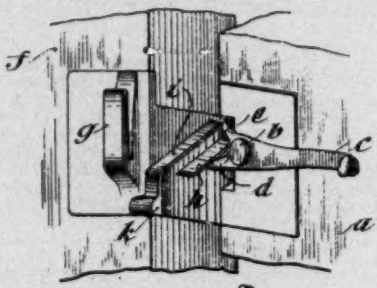
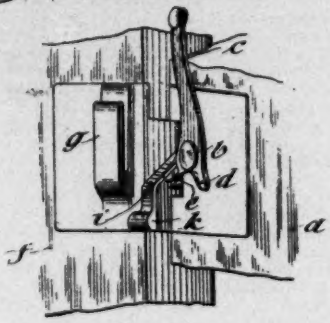


Fig. 7.



Witnesses
Thomas Kirkpatrick
H. Van Hessen-Schmidt

Inventor
Antoine Charles
by Alexander & Co
Attorneys

UNITED STATES PATENT OFFICE.

ANTOINE CHARLES, OF LIEGE, BELGIUM.

LATCH.

SPECIFICATION forming part of Letters Patent No. 702,185, dated June 10, 1902.

Application filed January 28, 1901. Serial No. 45,043. (No model.)

To all whom it may concern:

Be it known that I, ANTOINE CHARLES, engineer, a citizen of Belgium, residing at Rue Laireese No. 117, Liege, in the Kingdom of Belgium, have invented a certain new and useful Latch; and I do hereby declare the following to be a full, clear, and exact description of the invention, such as will enable others skilled in the art to which it appertains to make and use the same, reference being had to the accompanying drawings, forming part of this specification.

The present invention relates to automatic safety-latches, and is designed especially for the doors of railway-carriages.

The object of the invention is to provide a safety-latch supported on the door-jamb cooperating with guides on the door itself, which guides are arranged to coact with projections on the latch, so that in the closing movement of the door the latch is automatically operated in a sort of screw movement and automatically engages the latch-catch on the door.

The invention consists, in brief, of a pivoted latch provided with projections engaging inclined guides on the door, the projections on the latch coming successively in contact with said inclined guides in such a manner that a rotating action is given to the pivoted latch by the successive contact of said inclined guides with the respective projections on the latch.

The invention is illustrated in the accompanying drawings, in which—

Figure 1 represents a front view of a portion of a door and its supporting-casing, showing the latch in closed position. Fig. 2 is a similar view showing the latch in open position. Fig. 3 is a horizontal section showing the door partially open. Fig. 4 is a detail view of the guiding-plate and latch-catch attached to the door; and Figs. 5, 6, and 7 represent in perspective the parts in various positions during the course of operation.

In the drawings, *a* represents the door-jamb, to which is attached a suitable supporting-plate, upon which is pivoted on the pin or pivot *b* the locking-latch *c*, provided with a thumb-piece, as shown. This latch has preferably arranged at one end shoulders or offsets *d e*. The door is shown at *f* and is provided on the front side with an upwardly-opening latch-catch *g*, while to the edge of the door are attached inclined guides *h* and *i*, which parts, together with the latch-catch, are preferably arranged upon a common angle-iron. A stop *k* is also provided on said door to prevent the pivoted latch *c* when in its lowest position, as shown in Figs. 2 and 5, from throwing back against the door, thus preventing the opening of the same. When the door is closed, the pivoted latch lies in the usual manner in the latch-catch *g*; but when it is desired to open the door the latch is thrown by hand about its pivot *b* to the position shown in Figs. 2 and 5 and in which the stop *k* prevents too great a swing of the pivoted latch. The position of the shoulders *d* and *e* on the latch *c* is so chosen that the shoulder *d* on opening the door (see Fig. 3) impinges on the guides *h* and *i*, and therefore with its point projects somewhat over these guides. On closing the door, therefore, the shoulder *d* will pass under the guide *h*, which position is shown in Fig. 5, and in the further closing of the door the shoulder *d* slides on the inclined guide *h*, and because of the inclination thereof the latch *c* turns on its pivot *b* until the latch finally comes into the position shown in Fig. 6. Then the shoulder *d* passes under the guide-strip *i* and, sliding on this, continues the rotation of the latch *c*, when the shoulder *d* passes out of engagement with the guide *h*, the latch finally reaching the position shown in Fig. 7, and a very small further movement of the door suffices to allow the latch *c* to fall by gravity into the latch-catch *g*.

While, therefore, the opening of the door is performed manually in the ordinary manner when the door is shut, there takes place an automatic locking by means of the above-described device.

It will be noticed that the action of the guides *h* and *i* upon the respective offsets *d* and *e* is generally like that of two screw-threads with crossed axes.

Having thus described my invention, what I claim as new, and desire to secure by Letters Patent, is—

1. An automatic safety-catch for doors, comprising a pivoted latch, a latch-catch carried by the door, and means carried by said door for successively engaging and rotating said

latch and causing it to engage the catch; substantially as described.

2. An automatic safety-latch for doors, comprising a pivoted latch having a plurality of offsets, inclined guides carried by the door with which the offsets successively respectively engage, and a latch-catch on the door; substantially as described.

3. An automatic catch for doors comprising the pivoted latch *c*, having the offsets or lugs *d*, *e*, in combination with a door provided with inclined guides *h* and *i*, with which the offsets *d*, *e*, respectively successively engage, and a latch-catch *g*; substantially as described.

In testimony whereof I have signed this specification in the presence of two subscribing witnesses.

A. CHARLES.

Witnesses:
J. ERWINIE,
JEN. RUSTING.

106

No. 743,716. PATENTED NOV. 10, 1903.

J. HADKA.

LATCH.

APPLICATION FILED MAR. 13, 1903.

NO MODEL.

FIG. 1.

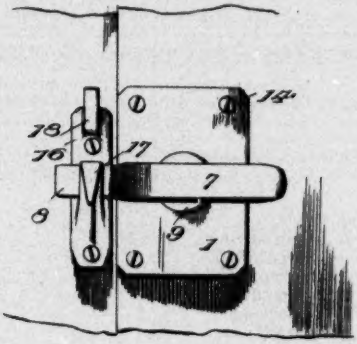


FIG. 2.

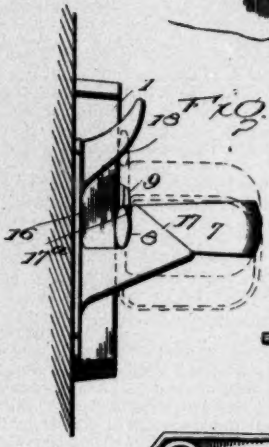


FIG. 3.

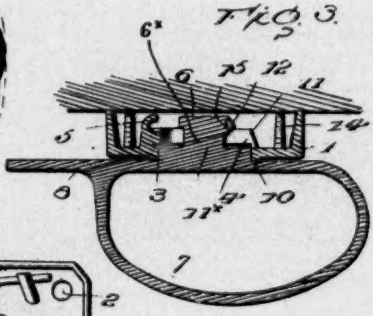
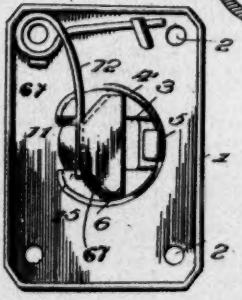


FIG. 4.



Witnesses:

Inventor

Joseph Hadka

by Benj. R. Catlin

Attorney

No. 743,716. Patented November 10, 1903.

UNITED STATES PATENT OFFICE.

JOSEPH HADKA, OF CHICAGO, ILLINOIS.

LATCH

SPECIFICATION forming part of Letters Patent No. 743,716, dated November 10, 1903.

Application filed March 13, 1903. Serial No. 147,592. (No model.)

To all whom it may concern:

Be it known that I, JOSEPH HADKA, a resident of Chicago, in the county of Cook and State of Illinois, have invented certain new and useful Improvements in Door-Latches; and I do hereby declare the following to be a full, clear, and exact description of the invention, such as will enable others skilled in the art to which it pertains to make and use the same.

The invention relates to latches or fastenings for the doors of ice-boxes and the like, and has for its object to simplify the construction and insure certainty and efficiency in action.

The invention consists in the construction hereinafter particularly pointed out and described.

In the accompanying drawings, Figure 1 is a front elevation of the improved latch. Fig. 2 is a side elevation of the same. Fig. 3 is a central horizontal section. Fig. 4 is a rear elevation of the latch-case.

Numeral 1 denotes a case provided with holes 2 to receive screws or the like whereby it may be fixed to the exterior of a refrigerator, box, or other receptacle.

The case has a central circular opening 3, nearly surrounded on the interior by a flange or C-shaped boss 4, provided with a malleable lip 5, adapted to be bent into the form shown in Fig. 4, to act like a stop to an oscillating stop or cross-bar 6, fixed to a handle 7, having a latch-bar 8 and a part 9, which covers a circular boss 10 on the exterior of the case and surrounding the opening 3.

The bar 6 is integral with a journal 11^{x} and with the handle. Said journal is rotatably held in the opening or bearing 3 and is connected to the bar by a short stud 6^{x}, which has such length that the inner face of the bar 6 rides on the proximate face of the boss 4 and the part 9 of bar 6 rides on the boss 10. This stud connection is made of small diameter, so as not to obstruct the assemblage of the integrally-connected boss and case.

The C-shaped interior boss 4 has its open part 11 opposite the lip 5 to facilitate assembling the connected handle, journal, and cross-bar with the case, which is effected before the lip 5 is bent by introducing the bar 6 endwise toward and through the opening 11 in an angular direction and then moving the handle and stud so that the axis of the latter shall be in the center of the opening 3, whereupon the bar 6 can be turned to ride on the boss 4. The lip being thereupon bent, as shown, the escape of the bar and stud is prevented thereby, the bent lip also serving as a stop to limit the rotary movement of the bar in either direction. By the "angular direction" referred to is meant a line inclined to the case and passing from its front, immediately adjacent the recess 11, upwardly through opening 3 toward the lip 5, which before it is bent will not stop the advancing end of bar 6 thus introduced until its rear end can be passed through the opening 3 at a point adjacent the cut-away or open part 11 of the boss 4. When thereupon the lip 5 is bent, as illustrated, it will stop the bar 11 in case it is attempted to remove it from the opening 3 by a reverse operation. Said bent lip is also in the path of each end of the bar 6 when the latter having been assembled with the case and spring is oscillated, together with the handle, connecting-stud 11^{x}, and journal 10, the latter having a bearing in the opening 3.

12 denotes a spring held between the main flange of the case and one or more lugs and by a case-securing screw 14. Said spring bears in a groove 15 in the edge of the cross-bar 6, and the bar, shaped as shown, has three grooved bearing-faces, the groove in each being indicated by a broken line. When the spring presses on the middle one, the latch is held in a central situation, which is the operative one, behind the keeper, and when the handle is turned with the effect to turn the bar against the stop 5 the spring bears on one or the other of the outside grooved faces, and the latch is held in a raised or inoperative position. A return movement of the cross-bar and latch is aided by the spring as soon as it is moved over the dead-center at the juncture of the two grooved faces of the cross-bar.

Two grooved bearing-faces inclined to the central one (indicated by dotted lines at 6′) are provided that the latch may be applied to either a right or left hand door, only one of the inclined faces being used in any particular case.

16 denotes a keeper having an inclined face

17, whereby when the latch-bar is thrown against the same in shutting the door it is raised so that it can drop behind the catch 17ª.

18 denotes a latch-guide which when the latch is held up by the spring or by friction will under the effect of the door-closing movement force it down sufficiently to cause the spring to move beyond the dead-point and depress the latch behind the catch of the keeper. When in opening the door the latch by means of the handle is moved to its elevated position, it rides upon the latch and is thereby crowded outwardly, with the effect to loosen the door, which being customarily made as near air-tight as practicable is liable to stick. Obviously the handle adds to the certainty of this operation.

The handle, latch, and cross-bar are preferably made integral, as also are the case and malleable lip or boss. These two pieces, the keeper, and the spring—four in number—constitute the whole device, which is capable of use either with a right or left hand door, the spring actuating the latch in either use of the device.

The latch and case may be assembled and the lip 5 bent to act as a stop either at the time and place of manufacture or when the latch is required for use, the latter method having a useful relation to packing and transporting the articles in compact form.

Reversible latches have been heretofore proposed. One characteristic of my improvement in that particular is the simple construction whereby a separate fastening is dispensed with and integral latch and stop bars are operatively combined with a case and with either a right or left hand door.

Having described my invention, what I claim as new, and desire to secure by Letters Patent, is—

1. In a door-fastening, the case having the interior C-shaped boss 4 provided with a stop, the latch having a journal in the case, and a cross-bar connected to the journal and resting on the boss 4, said stop operating to limit the reciprocation of the bar, and said bar having a grooved face, a keeper, and a spring bearing in the groove.

2. In a door-fastening, the case having the interior C-shaped boss 4 provided with a stop, the latch having a journal in the case, and a cross-bar connected to the journal and resting on boss 4, said stop operating to limit the reciprocation of the bar, and said bar having a centrally-situated grooved face and having a second like face inclined to the first, and a spring adapted to bear on either face to hold the latch operative or inoperative.

3. In a door-fastening, the case having the interior C-shaped boss 4 provided with a stop, the latch having a journal in the case, and a cross-bar connected to the journal and resting on boss 4, said stop operating to limit the reciprocation of the bar, and said bar having a centrally-situated grooved face and having a second like face inclined to the first, a keeper, and a spring adapted to bear on either face to hold the latch operative or inoperative, and a guide to move the latch or spring over the dead-point when the door is closed.

4. In a door-fastening, the case having the interior C-shaped boss 4 provided with a stop, the latch having a journal in the case, and a cross-bar connected to the journal and resting on boss 4, said stop operating to limit the reciprocation of the bar, and said bar having a centrally-situated grooved face and having two like faces inclined to the first, a keeper, and a spring adapted to bear on either face to hold the latch operative or inoperative whether on a right or left hand door.

5. In a door-fastening, the case, the latch-bar having a journal fitting an opening in the case, a cross-bar fixed to the journal, said bars each made integral with the journal and bearing on the case, one on the interior and the other on the exterior, and a stop to limit the movement of the cross-bar.

6. In a door-fastening, the case, the latch-bar having a journal fitting an opening in the case, a cross-bar, said bars each made integral with the journal and bearing on the case, one on the interior and the other on the exterior, and a stop to limit the movement of the cross-bar, said stop being also integral with the case.

In testimony whereof I have signed this specification in the presence of two subscribing witnesses.

JOSEPH HADKA.

Witnesses:
THOMAS C. ERNY,
GEORGE KLOPF.

94
110

No. 871,269. PATENTED NOV. 19, 1907.

J. A. GREGG.

TURN BUTTON.

APPLICATION FILED DEC. 10, 1906.

Fig 1

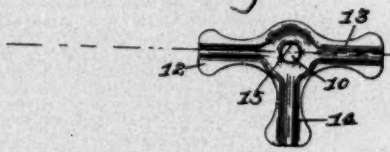


Fig 2

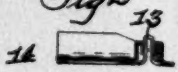
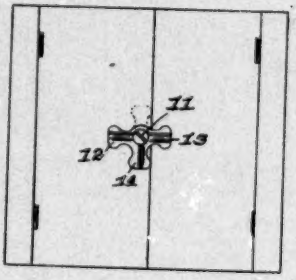


Fig 3



Fig 4



WITNESSES

Charles Willner

Leon P. Cummings

INVENTOR

John A. Gregg

By Geo. S. Fox

ATTORNEY

UNITED STATES PATENT OFFICE.

JOHN A. GREGG, OF BURLINGTON, IOWA.

TURN-BUTTON.

No. 871,269. Specification of Letters Patent. Patented Nov. 19, 1907.

Application filed December 10, 1906. Serial No. 347,192.

To all whom it may concern:

Be it known that I, JOHN A. GREGG, a citizen of the United States, residing in Burlington, county of Des Moines, and State of Iowa, have invented a new and useful Improvement in Turn-Buttons, of which the following is a specification.

The object of my invention is to provide a turn button adapted to automatically lock a cupboard or other door when the same has been closed.

A further object is to construct such a button in a simple, durable and inexpensive manner.

My invention consists of certain details of construction hereinafter set forth, pointed out in my claims and illustrated in the accompanying drawings in which

Figure I shows a front elevation of my device, Fig. II shows a side elevation, Fig. III shows a sectional view taken on the line X—X; and, Fig. IV shows my device fitted to a door.

Referring to the accompanying drawings the reference numeral 10 is used to indicate the orifice designed to receive the securing screw 11, said orifice being centrally located between three projecting arms 12, 13 and 14 respectively, the arms 12 and 13 being directly opposite to and in line with each other and the arm 14 being at right angles to each of the arms 12 and 13 and exactly located and balanced between them. The lower arm 14 may be constructed of heavier material than the arms 12 and 13 or may be weighted or may be constructed of the same material and not weighted, the object being to provide such a weight below the loose mounting as will cause the arms 12 and 13 to be in a horizontal plane and the arm 14 in a vertical plane when the turn button is resting in its normal position.

The orifice 10 is circular in conformation except for a small inwardly projecting lug 15 located centrally in the top portion of the under surface of the aperture, said lug being designed to engage the top of the screw 11 and as the said screw shank is designed to be of a less diameter than the width of the orifice 10 it is obvious that the projecting lug 15 will be the only portion of the surface of the orifice which will come into contact with the screw shaft and it is equally obvious that binding of the turn button will thus be prevented. The turn button is preferably constructed of metal with a centrally located raised portion extending longitudinally along the outer surface of each arm but different material and sadifferent conformation of the arms may be employed without changing my invention the principal feature of which is the weighted under portion employed to cause the turn button to rest in its normal position with the two side arms extended in a horizontal plane. Two horizontal arms are employed in order that they may be used interchangeably and further for strengthening purposes the idle one serving to prevent the active one from being removed from screw 11, by any attempt to open the door or the like without first moving the button to proper position.

Having thus described my invention what I claim and desire to secure by Letters Patent of the United States is:

1. A turn button comprising a horizontal arm, a depending vertical arm, said arms being formed with an opening at the intersection of lines passed longitudinally through the center of each arm, a single inwardly projecting lug extending from the inner surface of said opening to lie in alinement with said vertical arm, and a screw to secure said button in position, said screw being of less diameter than said opening and being normally engaged at its highest point by said lug.

2. A turn button comprising a horizontal arm and a depending vertical arm arranged at right angles to the horizontal arm and central of the length thereof, said arms being formed with an opening at a point at the intersection of lines passed through the center of each arm.

JOHN A. GREGG.

Witnesses:
CHARLES WILLNER,
LEON R. CUMMINGS.

96
114

E. RAATHS.

GATE LATCH.

APPLICATION FILED OCT. 7, 1911.

1,022,872.

Patented Apr. 9, 1912.

Fig. 1.

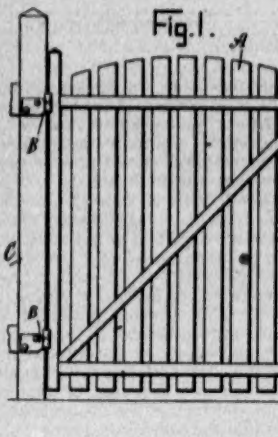


Fig. 2.

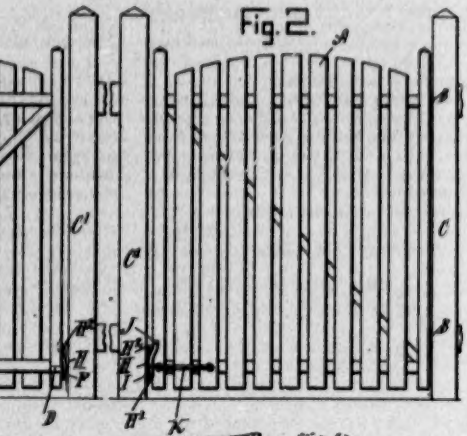
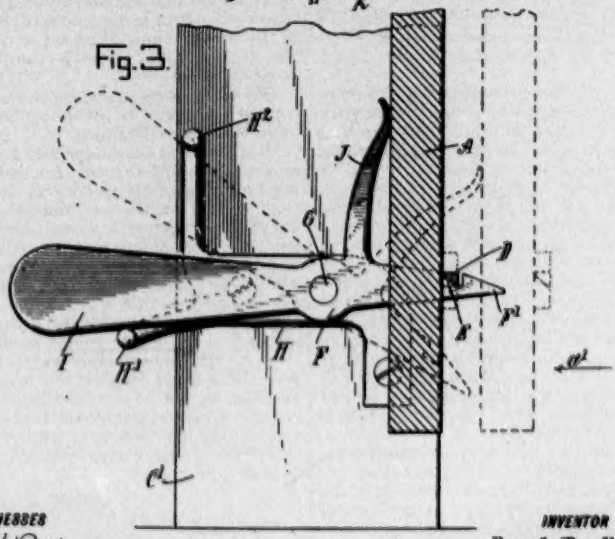


Fig. 3.



WITNESSES

C. F. Reichenbach

Rud. Hoschek

INVENTOR

Ernst Raaths

BY Munn & Co.

ATTORNEYS

COLUMBIA PLANOGRAPH CO., WASHINGTON, D. C.

UNITED STATES PATENT OFFICE.

ERNEST RAATHS, OF ANGELICA, WISCONSIN, ASSIGNOR OF ONE-HALF TO ERNST H. BRAMSCHREIBER, OF ZACHOW, WISCONSIN.

GATE-LATCH.

1,022,872. Specification of Letters Patent. Patented Apr. 9, 1912.

Application filed October 7, 1911. Serial No. 653,384.

To all whom it may concern:

Be it known that I, ERNEST RAATHS, a citizen of the United States, and a resident of the town of Angelica, in the county of Shawano and State of Wisconsin, have invented a new and Improved Gate-Latch, of which the following is a full, clear, and exact description.

The object of the invention is to provide a new and improved gate latch arranged to permit conveniently opening or closing and locking the gate without the use of the hands, and to prevent hogs and cattle from opening the gate.

For the purpose mentioned, use is made of a latch lever fulcrumed on the gate post and having a notch for engagement with a keeper on the gate, the said latch lever also having an integral push arm adapted to engage the gate and swing the same open on imparting an opening movement to the latch lever.

A practical embodiment of the invention is represented in the accompanying drawings forming a part of this specification, in which similar characters of reference indicate corresponding parts in all the views.

Figure 1 is a face view of one side of the gate provided with the improved gate latch; Fig. 2 is a similar view of the other face of the gate provided with the gate latch; and Fig. 3 is an enlarged transverse section of the same.

The gate A on which the improved gate latch is used is connected by hinges B to a gate post C and on the free end of the gate A and near the bottom thereof is arranged a keeper D adapted to be engaged by a notch E formed in a latch lever F extending transversely and fulcrumed on a pivot G held on a latch plate H screwed or otherwise fastened to the inner side of the gate post C' adjacent the free end of the gate A. The latch lever F is provided with a weighted arm I normally resting on a stop H' formed on the latch plate H, and the upward swinging movement of the weighted arm I is limited by a stop H^2 spaced from the stop H' and likewise forming part of the latch plate H. The latch lever F is further provided with an upwardly-extending arm J adapted to engage the face of the gate A opposite the one carrying the keeper D, so that when the gate A is in a closed position the free end of the push arm J bears against the face of the gate A, as will be readily understood by reference to Fig. 3, while the notch E is in engagement with the keeper D. A loop K is attached to the face of the gate A at the side opposite the one carrying the keeper D, the said loop being preferably located near the free end of the gate A and near the lower end thereof, as plainly indicated in Fig. 2. A person coming in the direction of the arrow a' and desiring to open the gate A needs only to press with one foot on the forwardly-projecting terminal F' of the latch lever F so as to swing the latch lever F downward and thereby disengage the notch E from the keeper D to unlock the gate. A further downward swinging movement of the latch lever F causes the push arm J to push the gate A open so that the person can walk through the opening between the gate posts. A person after passing through the open gate A engages one foot with the loop K and pulls the gate shut, it being understood that the latch lever F, after being relieved of pressure by the foot of the person as previously described, immediately swings back to normal position, as indicated in Fig. 3, and when the gate A is swung shut, as mentioned, the beveled top of the terminal F' slides under the keeper D, thus imparting a slight downward swinging motion to the lever F until the notch E registers with the keeper D, at which time the latch lever F is swung upward to its normal position by the action of the weighted arm I. The gate A is now again locked. A person coming in the inverse direction of the arrow a' lifts with his foot the weighted arm I so as to swing the latch lever F downward with a view to disengage the notch E from the keeper D and to cause the arm J to push the gate A open, as indicated in dotted lines in Fig. 3, to allow the person to walk through the open gate when in the inverse direction of the arrow a'. After having passed through the open gateway, it is only necessary for the person to give a return push to the gate A to cause the latch lever F to re-engage the keeper D in the manner above described.

From the foregoing it will be seen that the gate latch shown and described is very simple and durable in construction and composed of comparatively few parts, not liable easily to get out of order. It will also be

noticed that the gate is normally securely locked in position and cannot be opened by hogs or cattle, and a person coming in either direction can readily open the gate without the use of the hands.

Having thus described my invention, I claim as new and desire to secure by Letters Patent:

1. In combination with a swing gate and gate post, of a keeper fixed on the gate, a latch plate fixed on the gate post and provided with spaced stops, a latch lever fulcrumed on the said latch plate and provided with a notch adapted to engage the said keeper, the said latch lever having a weighted arm for engagement with the said stops and the latch lever having a push arm for engagement with the gate when the notch end of the latch lever is swung downward.

2. In combination with a swing gate and gate post, of a keeper on the gate, and a latch lever fulcrumed on the gate post and having a notch for engagement with the said keeper, the said latch lever also having an integral push arm adapted to engage the gate and swing the same open on imparting an opening movement to the latch lever.

3. In combination with a swing gate and gate post, a keeper fixed on the gate, a latch plate fixed on the gate post and provided with spaced stops, a latch lever fulcrumed on the said latch plate and provided with a notch adapted to engage the said keeper, the said latch lever having a weighted arm for engagement with the said stops and the latch lever having a push arm for engagement with the gate when the notch end of the latch lever is swung downward, and a loop fixed on the said gate at the side at which the said weighted arm is arranged.

In testimony whereof I have signed my name to this specification in the presence of two subscribing witnesses.

ERNEST RAATHS.

Witnesses:
R. C. WENLY,
J. E. LUTSEY.

Copies of this patent may be obtained for five cents each, by addressing the "Commissioner of Patents, Washington, D. C."

3537

118-119

T. O. SCHRADER.

99

LATCH FOR DOORS.

APPLICATION FILED AUG. 8, 1914.

1,117,709.

Patented Nov. 17, 1914.

2 SHEETS-SHEET 1.

FIG. 1.

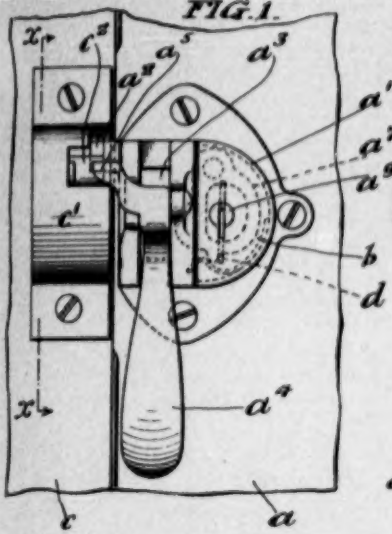


FIG. 2.

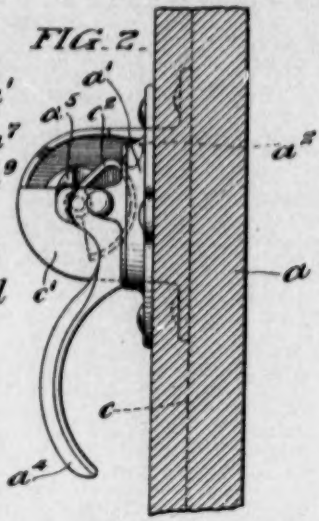
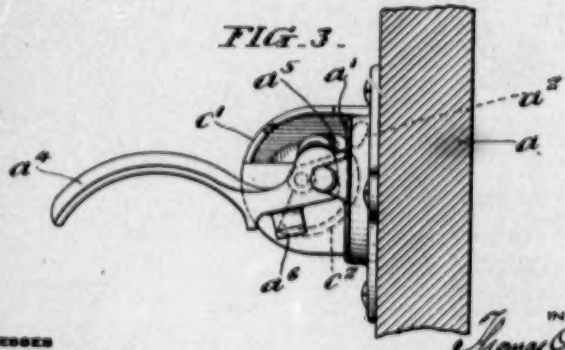


FIG. 3.



WITNESSES

Thomas M. Smith

Ray C. Smith

INVENTOR

Thomas O. Schrader,

BY

Fraser Dayton

ATTORNEY

120

T. O. SCHRADER.

LATCH FOR DOORS.

APPLICATION FILED AUG. 8, 1914.

1,117,709.

Patented Nov. 17, 1914.

2 SHEETS—SHEET 2.

FIG. 4.

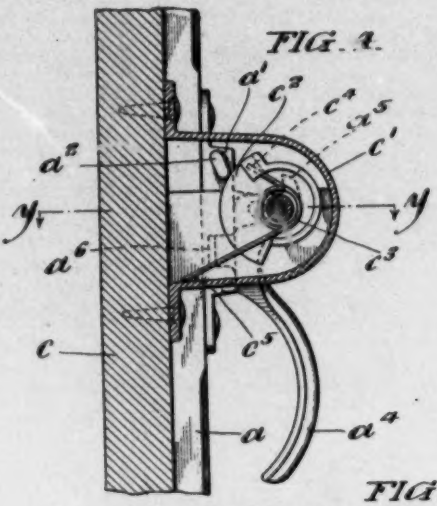


FIG. 5.

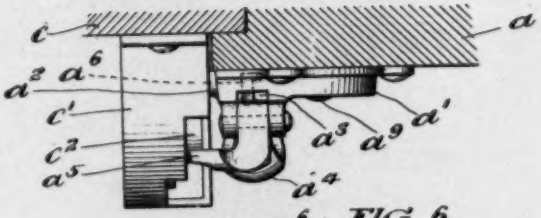
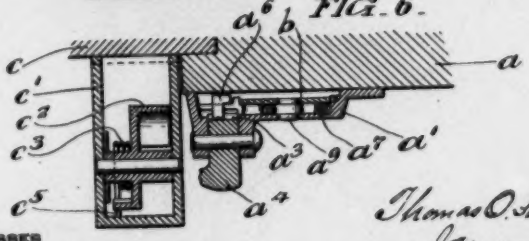


FIG. 6.



WITNESSES

Thomas M. Smith

Rose E. Smith

Thomas O. Schrader, INVENTOR

BY J. Walter Douglas

ATTORNEY

UNITED STATES PATENT OFFICE.

THOMAS O. SCHRADER, OF ALLENTOWN, PENNSYLVANIA, ASSIGNOR TO THE DENT HARDWARE COMPANY, OF FULLERTON, PENNSYLVANIA, A CORPORATION OF PENNSYLVANIA.

LATCH FOR DOORS.

1,117,709. Specification of Letters Patent. Patented Nov. 17, 1914.

Application filed August 8, 1914. Serial No. 855,795.

To all whom it may concern:

Be it known that I, THOMAS O. SCHRADER, a citizen of the United States, residing at Allentown, in the county of Lehigh and State of Pennsylvania, have invented certain new and useful Improvements in Latches for Doors, of which the following is a specification.

My invention has relation to a latch for doors, for closing refrigerators, among other uses therefor; and in such connection it relates to the particular constructive arrangement thereof, so that slamming the door fastens the same against release until the pull-handle thereof is operated.

The nature and scope of my present invention will be more fully understood from the following description taken in connection with the accompanying drawings forming part hereof, in which—

Figure 1, is a front elevational view of the latch-fastener for refrigerator and other doors, in an operative position, embodying essential main features of my said invention. Fig. 2, is a side elevational view of one of the members of the latch-fastener. Fig. 3, is a side elevational view of the pull-handle in a position to permit of release of the latch-fastener, to open the door. Fig. 4, is a vertical sectional view through the incased spring controlled shiftable cam of the latch-fastener, showing the tongue or projection of the housing for the pivotal pull-handle in an operative position and also said pull-handle in such position as to permit of the locking of the same. Fig. 5, is a top or plan view; and Fig. 6, is a transverse central sectional view through both members of the said latch-fastener.

Referring to the drawings *a*, is the door with a lock housing a^1, applied thereto and having a projection or tongue a^2. The housing is recessed at a^3, to pivotally support a pull-handle a^4, having a recessed flaring sidewise extending finger a^5, and underneath the handle it is provided with an inturned recessed foot a^6, to engage a keeper a^7, of a shiftable locking means *b*, mounted in the housing a^1. This means is provided with a key turning spindle and stud a^8, for shifting the keeper a^7, into contact with the inturned recessed foot a^6, of the pull-handle a^4, as clearly shown in Fig. 6, and while the said handle a^4, occupies a vertical depending position, for example, the position as shown in Figs. 1 and 2.

The door-jamb *c*, is provided with a side notched box-like casing c^1, for the mounting of a shiftable pivoted cam c^2, therein. This cam is provided with a coiled spring c^3 which is at one end c^4, connected with the cam and at the opposite end c^5 with the said casing c^1, as clearly shown in Fig. 4, so as to normally maintain the said cam in an operative position to be readily shifted against the tension of the spring c^3, by the tongue or projection a^2, contacting with the said cam by the slamming of the door *a*, causing the said tongue or projection thereby to slip over the surface of said cam to occupy the position in the casing c^1, as clearly shown in Fig. 4, thus holding the door securely fastened against release, until the pull-handle is elevated to depress sufficiently the said cam c^2, to enable the tongue or projection a^2, to ride back over the said cam, with the door ajar and with the pull-handle in a vertical depending position. When the latch-fastener occupies the position shown in Fig. 4, in which position the door is fastened against release, the pull-handle will be in a vertical depending position with the recessed foot a^6, of said handle registering with the keeper a^7, of the locking-means *b*, arranged alongside of the pull-handle a^4. Then by turning the key *d*, in the slotted spindle or stud a^8, of the locking-means *b*, the keeper a^7 thereof, will be shifted into contact with the recessed foot a^6 of the said pull-handle to prevent further movement thereof.

Having thus described the nature and objects of my invention, what I claim as new and desire to secure by Letters Patent is:—

A latch-fastener for doors, comprising a housing having a tongue and a pivotally

supported pull-handle having a finger, a spring controlled shiftable cam mounted in a casing of the door-jamb and arranged to be actuated by said tongue to latch said door and by said finger through the actuation of said handle to release said door.

In witness whereof I have hereunto set my signature in the presence of two subscribing witnesses.

THOMAS O. SCHRADER.

Witnesses:
MABEL G. DAVIS,
CLARA SCHAADT.

Copies of this patent may be obtained for five cents each, by addressing the "Commissioner of Patents, Washington, D. C."

T. O. SCHRADER.

LATCH FASTENER FOR DOORS.

APPLICATION FILED DEC. 16, 1914.

1,128,727. Patented Feb. 16, 1915.

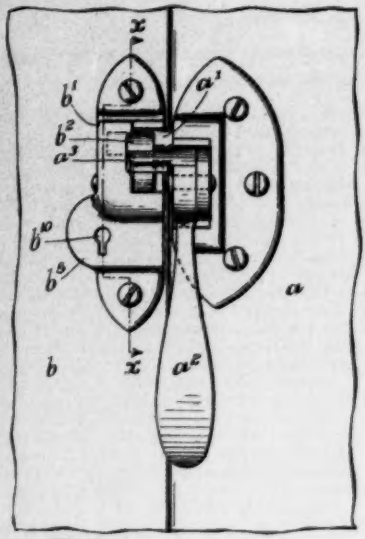


FIG. 1.

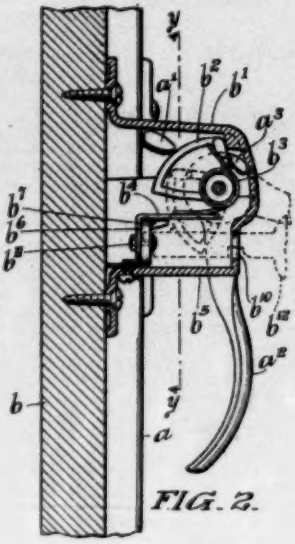


FIG. 2.

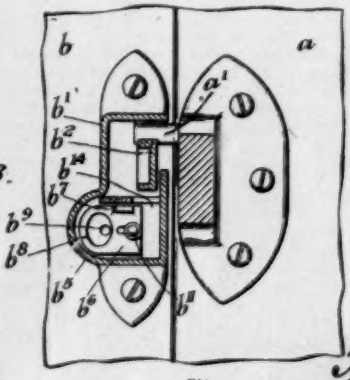


FIG. 3.



FIG. 4.

WITNESSES

Thomas M. Smith

Rose E. Smith

INVENTOR

Thomas O. Schrader,

BY J. Walter Douglas.

ATTORNEY

UNITED STATES PATENT OFFICE.

THOMAS O. SCHRADER, OF ALLENTOWN, PENNSYLVANIA, ASSIGNOR TO THE DENT HARDWARE COMPANY, OF FULLERTON, PENNSYLVANIA, A CORPORATION OF PENNSYLVANIA.

LATCH-FASTENER FOR DOORS.

1,128,727. Specification of Letters Patent. Patented Feb. 16, 1915.

Application filed December 10, 1914. Serial No. 876,431.

To all whom it may concern:

Be it known that I, THOMAS O. SCHRADER, a citizen of the United States, residing at Allentown, in the county of Lehigh and State of Pennsylvania, have invented certain new and useful Improvements in Latch-Fasteners for Doors, of which the following is a specification.

My present invention has relation to a latch-fastener for a refrigerator or other door; and in such connection it relates to the particular constructive arrangement of the fastener in conjunction with means arranged to be manipulated so as to prevent the latch-member being operated by a pull-handle when the door is in a closed position.

My present invention to the extent above defined, embraces improvements over my prior U. S. Patent 1,117,709, issued November 17th, 1914.

The nature and scope of my present invention will be more fully understood from the following description taken in connection with the accompanying drawings forming part hereof, in which—

Figure 1, is a front elevational view of a latch-fastener in application to a refrigerator door, in a closed position, embodying the main features of my said invention. Fig. 2, is a vertical sectional view on the line x, x of Fig. 1. Fig 3, is a fragmentary sectional and elevational view of the latch-fastener in application to the door and the jamb thereof; and Fig. 4, is a side elevational view of a key for operating the said slidable plate.

Referring to the drawings a, represents a door having a bracket with a projecting tongue a^1, and a pivotal pull-handle a^2, having a projecting finger a^3. The door-jamb b, is provided with a slotted casing and in which is mounted a spring controlled cam b^2. The spring b^3, of this cam bears against the same and a cover-plate b^4, located in an offset portion b^5, of the said casing b^1. This cover-plate is removably secured to one of the walls of the casing b^1, as shown in Fig. 2, and it is provided with a shiftable-plate having a lug b^7, and with an oval-shaped opening b^8, and located beneath is a socket b^9. This socket b^9, registers with a keyway b^{10}, in the casing b^1, as shown in Fig. 3. The slidable plate b^6, is held in position by means of a stud-pin b^{11}, so that when a key b^{12}, is inserted in the key-way b^{10}, the inner notched end b^{13}, of the key b^{12}, will occupy the position as shown in Fig. 2. By turning the key to the right it will be so shifted as that the lug b^7 of the plate b^6, will occupy a position in the space b^{14}, in close proximity to the cam b^2, and remain in such position until the key b^{12}, is reversed so as to permit the said plate b^6, to be shifted into the position it occupies in Fig. 3, when by raising the pull-handle a^2, the finger a^3, will depress the said cam and therewith the spring b^3, to permit of the release of the said tongue a^1, of the door from said cam b^2, and thus the door to be opened.

Having thus described the nature and object of my invention, what I claim as new and desire to secure by Letters Patent is:—

In a latch-fastener, a cam arranged on the door-jamb, a door provided with a tongue arranged to actuate said cam, a pull-handle having a finger arranged to depress said cam and a plate shiftable into the path of said cam in the latched position of said door to prevent movement of said cam, substantially as and for the purposes described.

In witness whereof, I have hereunto set my signature in the presence of two subscribing witnesses.

THOMAS O. SCHRADER.

Witnesses:
MABEL G. DAVIS,
CLARA SCHAADT.

T. O. SCHRADER.

SAFETY LOCK LATCH FOR REFRIGERATOR DOORS.

APPLICATION FILED JULY 1, 1915.

1,170,685. Patented Feb. 8, 1916.

Fig. 1.

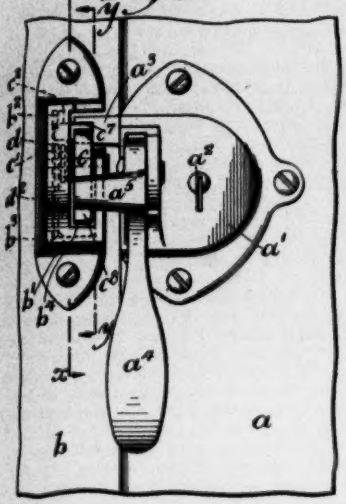


Fig. 2.

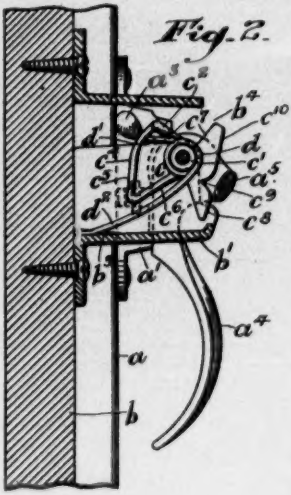


Fig. 3.

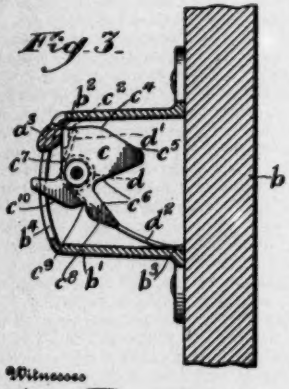
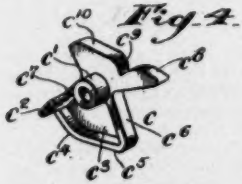


Fig. 4.



Witnesses

Thos. Rosemond.

Thomas M. Smith

Inventor

Thomas O. Schrader,

By J. Walter Douglass.

Attorney

UNITED STATES PATENT OFFICE.

THOMAS O. SCHRADER, OF ALLENTOWN, PENNSYLVANIA, ASSIGNOR TO THE DIRT HARDWARE COMPANY, OF FULLERTON, PENNSYLVANIA, A CORPORATION OF PENNSYLVANIA.

SAFETY LOCK-LATCH FOR REFRIGERATOR-DOORS.

1,170,685. Specification of Letters Patent. Patented Feb. 8, 1916.

Application filed July 1, 1915. Serial No. 37,412.

To all whom it may concern:

Be it known that I, THOMAS O. SCHRADER, a citizen of the United States, residing at Allentown, in the county of Lehigh and State of Pennsylvania, have invented certain new and useful Improvements in Safety Lock-Latches for Refrigerator-Doors, of which the following is a specification.

My invention relates to a latch particularly adapted for use in connection with refrigerator-doors, of the type in which slamming the door against the door-jamb latches the door and turning then a key causes the engaged latch to be locked, but it has been found that when the key is turned which causes the latch to assume a locked condition, it is possible to insert a thin bar against one end of the cam-device to shift the same so as to enable the tongue of the lock-casing to clear the cam-device and thus to open the door, while the latch is still in a locked condition; and therefore, my present invention is designed to prevent just such defined act, by the provision of a peculiar form of cam-device held preferably under spring-tension and so arranged as that any attempt to release the tongue of the lock-casing as well as any attempt at manipulating the finger of the pivoted lever, will be prevented by the form of the said cam-device, when the latched door is in a locked condition.

The nature and scope of my present invention will be more fully understood from the following description taken in connection with the accompanying drawings forming part hereof, in which—

Figure 1, is a front elevational view of a latch fastener with the safety feature of my present invention, embodied therein. Fig. 2, is a view partly in vertical section on the line x, x of Fig. 1, and in side elevation of the pivoted operating lever of the said latch fastener. Fig. 3, is a view in vertical section on the line y, y of Fig. 1 and in side elevation of the spring controlled cam-device embodying particular features as constructively arranged of my said invention and shown therein in a position for operating; and Fig. 4, is a perspective view of the reverse side of the cam-device to that shown in Fig. 3, detached from the casing, in which mounted.

Referring to the drawings a, is the door with a lock-casing a^1, secured thereto. This casing is provided with a key-way a^2, with a projecting tongue a^3, and an operating lever a^4, having a projecting finger a^5, for the lock arrangement of the said casing a^1, and for the operation of the same, reference is made to my United States Letters Patent No. 1,117,709 of November 17th, 1914, as showing an efficient arrangement for use with the type of latch-fastener embodying the particular features of my present invention.

The door-jamb b, is provided with a casing b^1, having an oblong opening b^2, in the top, and the said casing is secured to the door-jamb b. Internally in one corner is provided a lug b^3, and in the bottom is provided a recess b^4, both as clearly shown in Fig. 3, for purposes to be presently more fully explained.

The cam-device c, is pivotally mounted in the casing b. This device is of peculiar formation, as clearly shown in Fig. 4, having on one side a hub c^1, around which is mounted a coiled spring d, the respective terminals d^1 and d^2, of which engage a lug c^2, projecting from about one corner thereof and in the recess b^4, of the said casing b^1. One portion of the device c, as shown, is hollowed out at c^3, the periphery in this part is curved at c^4 and inclined at c^5, to the rounded end and therefrom it is formed into an inverted V-shape at c^6, and is substantially the same form on the opposite side at c^7, while the top is substantially straight across with the edge surfaces c^8 and c^{10} and having an intermediate notch c^9, between them, as clearly shown in Fig. 4. However, the detail arrangement of the said device as shown may be varied and equally good results be obtained, without departing from the scope of my present invention of the said device for the purposes defined in the said lock-latch. With said spring controlled cam-device c, mounted in the casing b^1, as clearly shown in Fig. 3, normally the lug c^7, of the said device will bear against the casing lug b^3. The arrangement of the spring as shown may be varied or omitted and still the cam-device be operative.

Slamming the door a, against the jamb b, will cause the tongue a^3, by the force exerted against the part c^7, of the device c, to move the same against the tension of the

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spring d, to allow the tongue a^3, to move into such a position as to engage the upper portion of the surface c^7 of the said cam-device to hold the said tongue against shifting and thus the door in a closed position. Turning the key in the key-way a^2, causes the operating lever a^4, to be locked with relation to the engaged position of the tongue a^3, with the said device c, as clearly shown in Fig. 2. It will thus be observed that any attempt to shift the said cam-deivce from this position with the finger a^5, in contact with the part c^8, of said device will be prevented and likewise any movement of the tongue a^3, sufficiently to release it from its engagement with the said device to open the door. The surface c^{10}, of the cam-device c, is adapted when the latch is unlocked to contact with the finger a^5, of the operating lever a^4, which depresses the part c^{10}, of the said device c, to cause it to assume momentarily such a position under the tension of the spring d, as to enable release of the tongue a^3, from its engaged relation with the part c^7, of the said device c, to thus freely open the door a. If for any reason the spring d, under which the device c, is held in operative position, as above described should become broken or disarranged and the latched door be still locked, the arrangement of the device c is such, that it will still prevent opening the door, because any attempt at shifting the device will cause at the same time, the finger a^5, of the operating lever a^4, to engage the part c^8, of the said device, to prevent a movement to such an extent as to shift the said device c, or to release the tongue a^3, from contact with the part c^7, of said device so that thereby the foregoing arrangement provides a safety lock-latch fastener for a refrigerator or other door.

Having thus described the nature and objects of my invention, what I claim as new and desire to secure by Letters Patent is:—

1. In a device of the character described, a lock-casing having a tongue, an operating lever having a finger, a casing and a spring controlled device mounted in said casing and having a cam-surface for said tongue to engage, to hold the door latched and an opposite contact-surface adapted to permit of the turning of said device in one position of movement of said finger and to prevent movement of said device in the other position of movement of said finger.

2. In a device of the character described, a lock-casing having a tongue, an operating lever having a finger, a casing having an oblong opening in the top and a spring controlled device mounted in said casing and having a cam-surface for said tongue to engage to hold the door latched and an opposite divided contact surface adapted to permit of the turning of said device in one position of movement of said finger and to prevent movement of said device in the other position of movement of said finger.

In witness whereof, I have hereunto set my signature in the presence of two subscribing witnesses.

THOMAS O. SCHRADER.

Witnesses:
MABEL G. DAVIS,
CLARA K. SCHAADT.

Copies of this patent may be obtained for five cents each, by addressing the "Commissioner of Patents, Washington, D. C."

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H. BLYE.

REFRIGERATOR LATCH.

APPLICATION FILED MAY 17, 1917.

1,238,876. Patented Sept. 4, 1917.

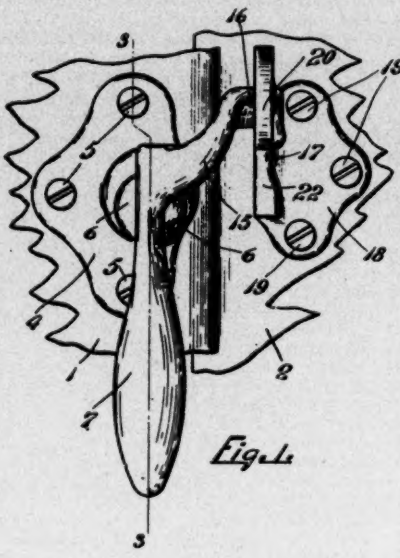


Fig. 1.

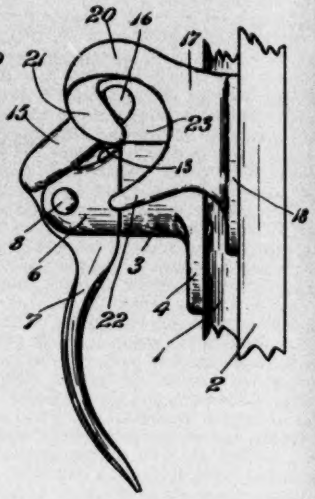


Fig. 2.

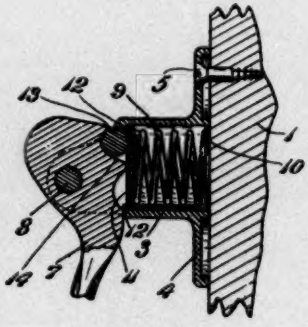


Fig. 3.

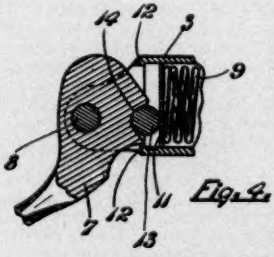


Fig. 4.

Inventor
Harold Blye
By Moulton & Livingstone
Attorneys

UNITED STATES PATENT OFFICE.

HAROLD BLYE, OF GRAND RAPIDS, MICHIGAN.

REFRIGERATOR-LATCH.

1,238,876. Specification of Letters Patent. Patented Sept. 4, 1917.

Application filed May 17, 1917. Serial No. 169,339.

To all whom it may concern:

Be it known that I, HAROLD BLYE, a citizen of the United States of America, residing at Grand Rapids, in the county of Kent and State of Michigan, have invented certain new and useful Improvements in Refrigerator-Latches; and I do hereby declare the following to be a full, clear, and exact description of the invention, such as will enable others skilled in the art to which it appertains to make and use the same.

This invention relates to a latch for doors, and one which in practice is especially adapted to be used with refrigerator doors. It is desirable that a refrigerator door be provided with latch construction by means of which the door, when closed, is held tightly, and one in which the opening of the door may be attained with the least amount of trouble and effort. One of the objects and purposes of my invention is the attainment of this desired end. Another object and purpose of the invention is the construction of the latch in such manner that on moving the door toward its closed position the latch will act automatically to draw the door into tightly closed position. Many other objects and purposes of the invention will be apparent as understanding of the invention is had from the disclosure made thereof in the accompanying drawing in which;

Figure 1 is a front elevation showing the latch and the keeper therefor applied, respectively, to a door and door casing.

Fig. 2 is a side elevation showing the latch engaged with the keeper, the door being closed.

Fig. 3 is a fragmentary vertical section taken substantially on the line 3—3 of Fig. 1 with the latch occupying its closed position, and

Fig. 4 is a similar view illustrating the latch handle in another position from that shown in Fig. 3 when the door is open.

Like reference characters refer to like parts throughout the several views of the drawings.

In the use of the latch on a refrigerator, the latch is applied to the door 1 thereof while the keeper is applied to the casing 2. In construction the latch comprises a substantially cylindrical hollow housing 3 integral with which is an outwardly extending plate 4 through which screws 5 or other suitable attaching devices may be passed to attach the same to the door. Two spaced apart ears 6 project from the outer end of the housing between which a handle 7 is pivotally mounted on the pivot pin upon 8. A coil spring 9 under compression is located within the housing and disposed between two plates 10 and 11 the former of which bears against the door while the latter is pressed outwardly by spring 9, being retained from displacement from the housing by the annular inturned shoulder 12 adjacent the outer end thereof. A roller or ball 13 is located within a recess 14 made in the end and inner side of the handle, plate 11 bearing thereagainst. In one position of the handle, as shown in Fig. 3, the pressure of the spring exerts a turning moment on the handle tending to force the lower end thereof toward the door. In the other portion of the handle, as shown in Fig. 4, the line of force of the spring transmitted by the ball is substantially across the axis of the pin 8 or it may be moved slightly beyond whereby the lower end of the handle is held in outer position.

An arm 15 is cast integral with the upper end of the handle extending over the door and inwardly toward the casing and terminating in a laterally turned end 16. Said end 16 is adapted to engage with a keeper which is attached to the casing, it comprising an outwardly extending member 17 integral with which is formed a laterally extending plate 18 which is secured, by screws 19 or other suitable connections, to the casing as shown. The upper part of the part 17 is extended outwardly as indicated at 20 and is then bent back partly upon itself forming an overhanging retaining lip 21. Below the part 20 is a projection 22 having curved outline at its outer side whereby a substantially curved slot 23 is made in the keeper through which the laterally projecting end 16 of the arm 15 may move.

In the closed position of the door the force of the spring exerted on the handle causes the end 16 to engage tightly against the overhanging lip 21 of the keeper. If it is de-

sired to open the door all that is necessary is to grasp the depending portion of the handle member and exert a pull thereon, whereupon the handle as a whole is turned about the pivot 8 and the end 16 of arm 15 disengaged from the keeper and moves through the curved slot 23. The pull exerted on the handle and transmitted to the door has a tendency to open the door as the part 16 disengages from the lip 21 but if the door should stick, said part 16 strikes against the opposite side of the keeper and bears against the outward projection 22 forcing the door open. At the same time the ball or roller 14 moves across the plate 11 to substantially the position shown in Fig. 4 the spring thereupon holding the handle in the other position to which it has been moved.

On closing the door, the handle occupying the position shown in Fig. 4, the end 16 strikes against the projection 22 and causes an inward movement of the depending portion of the handle until such time as the line of force of the spring has passed by the axis of the pivot 8, after which the spring completes the inward movement of the depending portion of the handle and forces end 16 of arm 15 into engagement with the overhanging lip 21 of the keeper. It will be noted that the only action required in opening the door is to grasp the depending portion of the handle and exert a pull thereon; while in closing the door nothing is required but that the door be swung with a slight degree of force toward its closed position, the latch acting automatically to engage with the keeper and hold the door securely in closed position. The latch also is particularly effective against any opening of the door from the inside as may occur when ice or the like falls against it, the inclination of the retaining lip 21 of the keeper with respect to the end 16 which engages therewith being such that force applied on the inside of the door against the part 16 causes it to engage more strongly with the part 21. All of these features in connection with especially simple and economical structure of the latch mechanism make the latch one of particular merit when used in connection with refrigerators.

I claim:—

1. In a device of the character described, a housing, a handle pivotally mounted on the housing, an arm on the handle, said arm being provided with a laterally projecting end adapted to engage a keeper, a spring within the housing, a plate between the spring and handle normallly forced toward the lever by the spring, and a roller seated in a recess on the inner side of the lever and interposed between the lever and plate, said roller being so positioned with respect to the handle that it moves across the plate on outward movement of the handle, the line of force of the spring passing across the pivotal axis of the handle, substantially as described.

2. In a device of the character described, a pivotally mounted handle, an arm projecting from one end of the handle, said arm having a laterally extending keeper engaging end and spring means associated with the handle for holding it in either of two extreme positions between which it is adapted to move, the line of force of the spring crossing the pivotal axis of the handle as the handle moves from one position to the other.

3. In a device of the character described, a housing, spaced ears projecting from the housing, a handle pivotally mounted between said ears, an arm on the handle at the upper end thereof extending laterally and inwardly and terminating in a lateral keeper engaging end, and mechanism within the housing associated with the handle for holding it in either of two extreme positions between which it is operable.

4. In a device of the character described, a pivotally mounted handle, an arm on the handle at one end thereof and adjacent the pivot, said arm terminating in a laterally projecting end adapted to engage with a keeper, mechanism associated with the handle for holding it in either of two extreme positions between which it is operable, and a keeper having a slot into which said keeper engaging end of the arm is adapted to enter to engage against the keeper and automatically throw the handle from one position to the other, simultaneously moving the keeper engaging portion of the handle into engagement with the keeper.

5. In combination with a door, a housing secured to the door and projecting therefrom, a handle pivotally mounted over the housing said handle at its upper end and its inner side being provided with a recess, a roller seated in the recess, a plate within the housing a spring within the housing forcing the plate against the roller, a door casing, a keeper secured thereto, an arm having a keeper engaging portion on the handle, said keeper engaging portion engaging with the keeper when the door is in closed position but disengaging therefrom on outward pivotal movement of the lower end handle, substantially as described.

6. In combination, a door casing, a keeper having a slot therein extending inwardly from the outer edge of the keeper and curving upwardly and forwardly back of an overhanging lip on the keeper, a door, a latch comprising a housing attached to the door, a handle pivotally mounted on the housing, means within the housing as-

ciated with the handle for holding the same in either of two extreme positions between which it is adapted to be moved, and a keeper engaging part on the handle adapted to enter the slot in the keeper and engage with the keeper as the door is closed, automatically causing the handle to throw from one position to the other whereby said keeper engaging part enters into the slot of the keeper and engages against said lip, substantially as described.

In testimony whereof I affix my signature.

HAROLD BLYE.

Copies of this patent may be obtained for five cents each, by addressing the "Commissioner of Patents, Washington, D. C."

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A. D. WARD.

REFRIGERATOR DOOR LOCK.

APPLICATION FILED FEB. 1, 1917.

1,250,736. Patented Dec. 18, 1917.

Fig. 1.

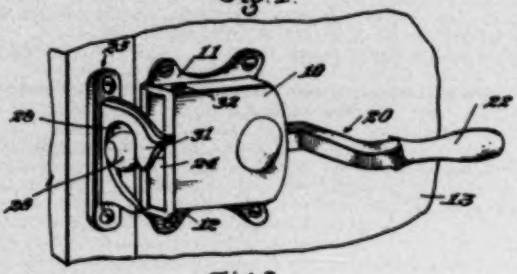


Fig. 2.

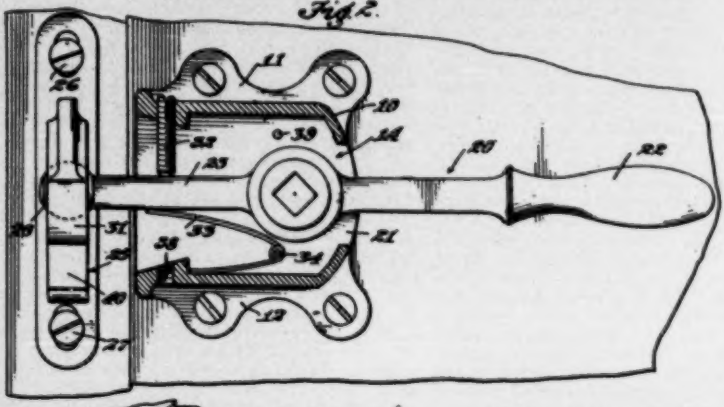


Fig. 3.

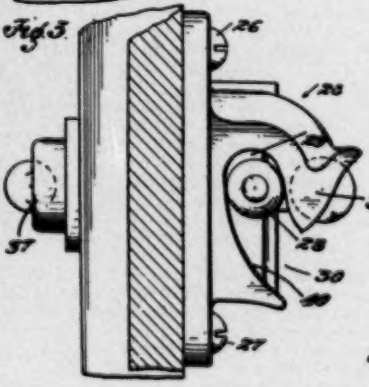
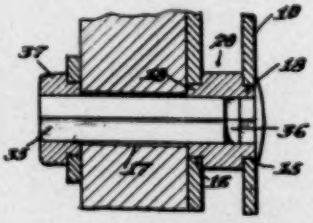


Fig. 4.



Inventor.
Abraham D. Ward.
by Hazard & Miller
Attys.

UNITED STATES PATENT OFFICE.

ABRAHAM D. WARD, OF LOS ANGELES, CALIFORNIA

REFRIGERATOR-DOOR LOCK.

1,250,736. Specification of Letters Patent. Patented Dec. 18, 1917.

Application filed February 1, 1917. Serial No. 143,987.

To all whom it may concern:

Be it known that I, ABRAHAM D. WARD, a citizen of the United States, residing at Los Angeles, in the county of Los Angeles and State of California, have invented new and useful Improvements in Refrigerator-Door Locks, of which the following is a specification.

This invention relates to a door lock and particularly pertains to a latch for refrigerator doors and the like.

The locks used on most refrigerator doors are so constructed as to wedge the doors into a closed and sealed position. When it is desired to open the doors, however, great force must be used to break the seal and cause the door to swing outwardly to its open position. It is the principal object of this invention to provide a door latch which will act to tightly close the door and when actuated in a reverse manner will act to break the seal and open the door so that there will be no difficulty experienced in tightly closing the door or opening it thereafter.

Another object of this invention is to provide a door latch which is formed of few parts and which may be easily actuated by means of a single actuating lever to either open or close the door.

Another object of this invention is to provide a lock of the above class which possesses a bolt so constructed as to not become wedged within the keeper and not liable to wear either the keeper or the bolt member.

It is a further object of this invention to provide a lock which is decidedly strong in construction and which will act in an automatic manner to lock and close or open and unlock a door by slight movement of a single locking lever.

Other objects will appear hereinafter.

The invention is illustrated, by way of example, in the accompanying drawings in which:

Figure 1 is a view in perspective illustrating the latch in its locked position upon a refrigerator.

Fig. 2 is a view in front elevation with parts broken away to more clearly illustrate the latch construction and its movement of operation.

Fig. 3 is a view in end elevation particularly illustrating the peculiar formation of the bolt keeper.

Fig. 4 is a view in transverse section illustrating the manner in which the operating handle is mounted within its casing.

Referring more particularly to the drawings, 10 indicates a lock casing which is here shown as substantially rectangular in shape and provided with outwardly extending flanges 11 and 12 by which it may be secured to the face of a door 13. The sectional configuration of the lock housing is channel shape forming an opened side or back which is adapted to be fitted with a back plate 14 held in place by the housing. The front plate of the housing is formed with a circular bore 15 which is in horizontal alinement with a bore 16 formed through the back plate of the lock and in communication with a passage-way 17 extending through the door. The two bores are provided to receive trunnions 18 and 19 formed upon opposite sides of the central boss of a lock handle 20. This handle extends rearwardly from the boss through an opening 21 in the end of the lock housing and is there formed with a handle grip 22 by which the lock may be operated. A lock bolt 23 is formed integral with the handle and extends in alinement therewith through an end opening 24 in the housing. This bolt is of a length sufficient to permit it to extend across the edge of the door and to engage a bolt keeper 25 secured by screws 26 and 27 to the door post. The end of the lock bolt 23 is provided with a roller ball 28 which allows the bolt to be actuated without appreciable friction.

Reference being had to Fig. 3 it will be seen that the keeper is of peculiar configuration and is an essential feature of the invention. As shown, an arcuate roller slot 29 is formed by the keeper and is of a width approximately that of the diameter of the roller ball 28. This slot has an opening 30 at its lower end, through which the ball 28 may pass. The walls of the slot leading from the opening taper inwardly and upwardly and cause the door to be drawn inwardly to a tightly closed position as it is locked. The upper portion of the keeper surrounding the throat of the arcuate slot is formed with a horn 31 which tapers inwardly and downwardly in a manner to de-

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press the ball roller 28 when closing the door and to lead it into the slot without manipulation of the lock handle.

As a means for adjusting the sealing and locking action of the lock, an adjusting screw 32 is provided and is here shown as extending downwardly through the upper side wall of the lock housing to bear against the upper face of the lock bolt. The bolt 23 is held against the screw 32 by means of a leaf spring 33 which is mounted upon a pin 34 extending outwardly from the back plate of the lock. When the draw of the lock is to be increased the spring 33 is relieved from the lock bolt 23 and will cause the roller 28 to move farther into the throat of the groove 29 as the door is locked. This, as will be seen, causes the door to be drawn forcibly into its closed position and more thoroughly sealed.

In order to permit the door to be locked and unlocked from the interior of the refrigerator or room, a square pin 35 is positioned within a socket 36 in the lock handle. This pin extends through the opening 17 in the door and is fitted with an actuating handle 37 which is secured to the end of the pin and upon the opposite side of the door from the lock, thus permitting the lock to be readily actuated from the side of the door.

Attention is directed to the fact that the parts of this lock are reversible as in some locations and for some uses it would be desirable to pull downwardly upon the handle 20 when opening the door instead of upwardly as here shown. In this case the keeper 25 is inverted so that its throat opening will be above the normal locked position of the bolt. In order to cause the lock bolt to properly seat within the keeper when so inverted the adjusting screw 32 is positioned through a threaded opening 38 in the lower side wall of the lock housing and the leaf spring 33 is mounted upon a pin 39 extending from the back plate and positioned above the lock bolt, as will be evident.

When the lock is mounted upon a door the back plate and lock housing are secured by means of suitable screws to the face of the door and the keeper is fastened upon the face of the door post. The screw 32 is then adjusted to bring the bolt 23 and handle 20 in substantial horizontal alinement, after which the keeper is moved vertically, due to the clearance afforded by the screw slots in its bolting flange. When proper adjustment has been made to permit the door to properly seal the screws 26 and 27 are tightened and the lock is ready for use. Attention is directed to the fact that it is important to normally locate the keeper so that the face of the horn 31 will strike the center of the roller 28 substantially midway its length and thereby insure that the roller will be properly led into the arcuate locking slot.

In operation the door is closed. As it reaches its closed position the roller 28 will strike the forward downwardly tapering face of the horn 31 and will be led downwardly and into the slot 29, after which the lock handle may be depressed and this will force the ball 28 along the rear face of the horn 31 to seal the door. When the door is opened the roller will bear upon the face of the arcuate slot and as it is moved downwardly it will naturally be advanced to cause the door to partially open, thus breaking the seal and allowing the door to be thereafter easily handled.

It will thus be seen that the lock here provided will act in an effective manner to simultaneously lock and clamp a door in position and when its operation is reversed will simultaneously unlock and open the door with the use of a single lever and by a single movement.

While I have shown the preferred construction of my lock as now known to me, it will be understood that various changes in the combination, construction and arrangement of parts may be made by those skilled in the art without departing from the spirit of my invention.

I claim:

1. A refrigerator door lock comprising a casing having opposite screw seats and opposite spring seats, a lock handle having a boss within the casing, trunnions extending from the boss forwardly and backwardly into recesses in the casing to pivotally mount the handle, a lock bolt extending from the boss in the opposite direction from the handle centrally between the screw seats and between the spring seats and projecting from the casing, an adjusting screw adapted to be mounted through either screw seat to engage the lock bolt and limit the motion of the bolt in one direction, and a spring adapted to be mounted in either spring seat to press the bolt against the adjusting screw, the arrangement of the casing, adjusting screw and spring being such that the screw and spring may be moved from one side to the other of the bolt to operate the bolt in either direction as desired and make the lock reversible.

2. A refrigerator door lock comprising a casing adapted to be mounted against the face of a door having opposite screw seats and opposite spring seats, a handle having a central boss provided with trunnions extending both ways into recesses in the casing to pivotally mount the handle, a lock bolt extending from the central boss between the screw seats and between the spring seats, a roller ball mounted upon the tip of the lock bolt, a set screw adapted to be adjustably mounted through either screw seat to limit the swinging of the lock bolt in one direction, a spring adapted to be mounted in either

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spring seat to press the lock bolt against the set screw, the spring and set screw being thus reversible to change the direction of the lock bolt as desired, and a bolt keepe adapted to be mounted upon the frame of the door and adapted to be engaged by the roller tip of the lock bolt, said keeper having an inclined horn leading to an arcuate roller slot so that the roller ball will pass the horn to the slot when the door is slammed shut and so that when the roller ball is in the slot, operation of the handle will force the door closed or open as desired.

In testimony whereof I have signed my name to this specification.

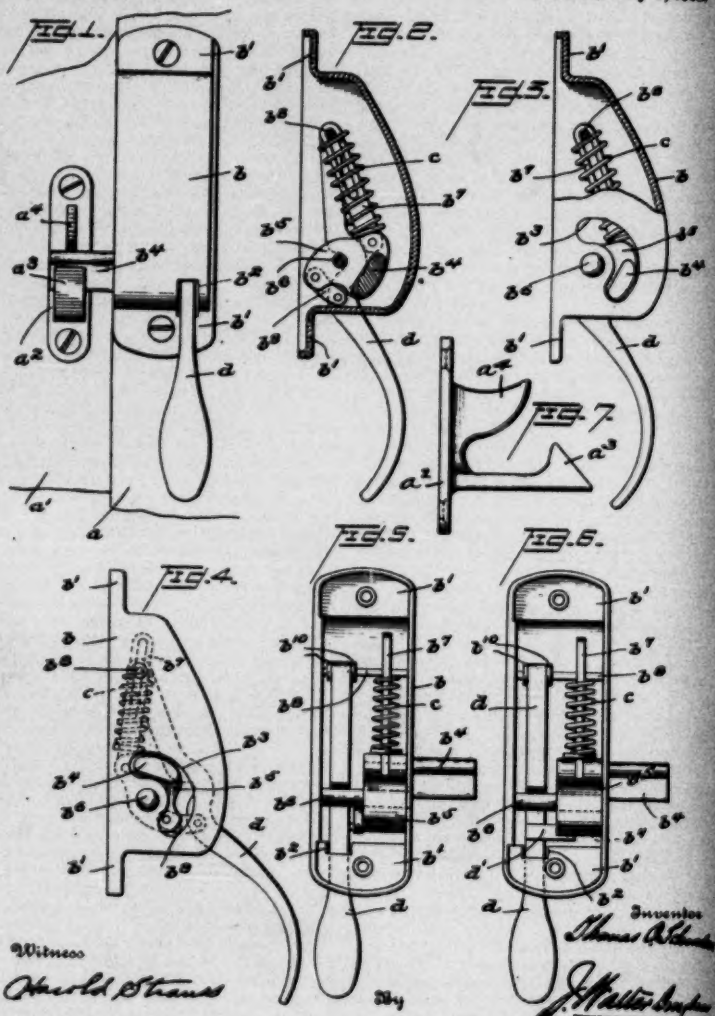
ABRAHAM D. WARD

116
144

T. O. SCHRADER.
LATCH FOR DOORS.
APPLICATION FILED APR. 6, 1917.

1,265,120.

Patented May 7, 1918.



Witness
Oswald B. Stamm

Inventor
Thomas O. Schrader
By
J. Walter Sayler
Attorney



TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1917

No. 237 14

ALEXANDER F. WINTERS AND BASIL R. CRAMPTON, PETITIONERS,

vs.

DENT HARDWARE COMPANY

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT

PETITION FOR CERTIORARI FILED NOVEMBER 14, 1916

CERTIORARI GRANTED JANUARY 8, 1917

(33,459)

(33,856)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1928.

No. 547

ALEXANDER F. WINTERS AND BASIL R. CRAMPTON, PETITIONERS,

vs.

DENT HARDWARE COMPANY

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT

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IN THE

District Court of the United States,

FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

IN EQUITY.

No. 3999. March Term, 1927.

ALEXANDER F. WINTERS and BASIL R. CRAMPTON	Cyrus N. Anderson, Esq.,
v.	
DENT HARDWARE COMPANY.	E. Hayward Fairbanks, Esq.

DOCKET ENTRIES.

Mar. 15, 1927.	Bill of Complaint, filed.
" " "	Subpœna exit—returnable April 4, 1927.
" " "	Affidavits in re: Motion for Preliminary Injunction, filed.
" " "	Motion for Preliminary Injunction, filed.
" " "	Exhibit A filed.
" " "	Notice of Hearing, filed.
" " "	Decree fixing time for hearing Motion for Preliminary Injunction, filed.
" 16, "	Plaintiffs Exhibits B, C and D, filed.
" 17, "	Printed copy of Bill of Complaint, filed.

Mar. 24, 1927.	Appearance of E. Hayward Fairbanks, Esq., for Defendant, filed.
Apr. 4, 1927.	Subpœna returned—on March 18, 1927, served and filed.
" 27, "	Answer, filed.
May 6, 1927.	Reply Affidavit of B. R. Crampton, in re: Motion for Preliminary Injunction, filed.
" " "	Reply Affidavit of F. E. Liverance, Jr., in re: Motion for Preliminary Injunction, filed.
" 18, "	Trial.
July 20, 1927.	Trial concluded.
Aug. 2, 1927.	Copy of Certificate to Comm. of Patents, filed.
" 11, "	Opinion, Dickinson, J., filed.
" 12, "	Decree dismissing Bill of Complaint—costs to defendant, filed.
Oct. 10, 1927.	Assignments of Errors, filed.
" " "	Petition for Appeal and Decree granting prayer of Petition, filed.
" " "	Sum of $250, deposited in Registry of Court in lieu bond sur Appeal.
" " "	Præcipe for transcript of record sur Appeal, filed.
" 11, "	Citation allowed and issued.
" 17, "	Citation returned "service accepted" and filed.
" " "	Plaintiffs' Statement of evidence in narrative form, filed.
" " "	Stipulation in re: Narrative Statement of testimony and Decree approving same, filed.

BILL OF COMPLAINT.

(Filed March 15, 1927.)

IN THE DISTRICT COURT OF THE UNITED STATES, FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

IN EQUITY.

No. 3999. March Term, 1927.

Alexander F. Winters and Basil R. Crampton,
Plaintiffs,

v.

Dent Hardware Company, a Corporation,
Defendant.

FOR INFRINGEMENT OF UNITED STATES LETTERS PATENT No. 1,385,102.

ALEXANDER F. WINTERS and BASIL R. CRAMPTON, residents of the City of Grand Rapids, in the County of Kent and State of Michigan, and citizens and inhabitants of said State, bring this their bill of complaint against DENT HARDWARE COMPANY, a corporation which, plaintiffs are informed and believe, was organized and exists under and by virtue of the laws of the State of Pennsylvania and has its office and principal place of business in the City of Fullerton, County of Lehigh, and State of Pennsylvania, within the Eastern District of Pennsylvania, and complain and say:

I. This cause arises under the patent laws of the United States, being a suit to restrain infringement of certain hereinafter named Letters Patent of the United

States and for an accounting and profits and damages arising from said infringement; wherefore this court has jurisdiction.

II. Heretofore, and prior to December 7, 1920, Alexander F. Winters and Basil R. Crampton, being then, as now, residents of the City of Grand Rapids, in the County of Kent and State of Michigan, were the original, first and joint inventors of certain new and useful improvements in LATCH, which improvements were not known or used by others in this country before their invention thereof, and were not patented or described in any printed publication in this or any foreign country before their invention thereof, and were not in public use or on sale in the United States or described in any patent or printed publication anywhere for more than two years prior to their application for patent therefor in the United States, and were not patented in any country foreign to the United States on an application filed by them or their legal representatives or assigns more than twelve months prior to their application for patent therefor in the United States, and which had not been abandoned.

III. The said Alexander F. Winters and Basil R. Crampton, being as aforesaid, the original, first and joint inventors of said improvements, made application in due form of law on the seventh day of December, 1920, to the Commissioner of Patents for the grant of Letters Patent of the United States for the said improvements; whereupon, after due proceedings were had, Letters Patent No. 1,385,102 for said improvements, duly sealed, countersigned and executed, were issued to said Alexander F. Winters and Basil R. Crampton whereby there was vested in them, their legal representatives and assigns, for the term of seventeen years from and after the nineteenth day of

July, 1921, the exclusive right to make, use and vend said improvements throughout the United States and territories thereof, the original of which patent or a duly certified copy thereof is ready to be produced in court.

IV. By virtue of the premises, plaintiffs became, are now, and have been at all times since the nineteenth day of July, 1921, joint and exclusive owners of said Letters Patent No. 1,385,102 and the inventions therein described, disclosed and claimed and of all rights and privileges granted and secured thereby. Plaintiffs are owners of 98 per cent. of the capital stock of the corporation, Winters & Crampton Manufacturing Company, a corporation of the State of Michigan, located at Grand Rapids, Michigan, where the latch, shown, described and claimed in said Letters Patent No. 1,385,-102, is manufactured and sold; and which has in the past been manufactured and sold by said corporation and by its predecessor, Winters, Stryker & Crampton. Large sums of money have been invested and expended and great trouble and expense in and about said invention has been borne for the purpose of developing the same and introducing it into use and making the same profitable to plaintiffs and the corporation with which they are connected and useful to the public. Said corporation is equipped and has the necessary capital and facilities for supplying all demands for the invention under said patent, promptly and at a reasonable cost. Plaintiffs have fully advised the public and the defendant of its ownership of said patent aforesaid, notwithstanding which said defendant persisted in infringement after said notice.

V. The latch construction developed by plaintiffs is very useful, attractive in appearance and effective

mechanically so that it has had sale in large quantities and was immediately eagerly accepted by refrigerator manufacturers, displacing other types of latch construction before used by them. Great commercial demand for the latch constructions in accordance with the aforesaid patent of plaintiffs was created and in a very short time large orders for said latch constructions were received and have been received continuously since about the first of the year 1921 to the present time.

VI. The defendant, well knowing the premises, has manufactured and sold a latch construction which is made in such close imitation of plaintiffs' latch as manufactured and as disclosed by said patent aforesaid, that differences in the two are not discernible to ordinary observers, and has infringed said patent aforesaid by manufacturing and selling latch constructions for use on refrigerators in the Eastern District of Pennsylvania and elsewhere throughout the United States prior to the commencement of this suit and since the date of issue of said Patent No. 1,385,102. And this defendant is still manufacturing and selling said latches and threatens to do so in the future. Defendant plans to interfere and has interfered with the business which plaintiffs have, at great expense and effort, developed in the manufacture and sale of devices made in accordance with the said patent aforesaid and has infringed said patent, all in defiance of the rights secured to the plaintiffs and to their great and irreparable loss and injury and whereby plaintiffs have been, are still being, and will be so long as such infringement continues, greatly and irreparably damaged and injured and deprived of profits which plaintiffs would otherwise make under said patent.

VII. The plaintiffs heretofore brought suit under said patent aforesaid against Sanitary Refrigerator Company, a corporation of Wisconsin located at the City of Fond lu Lac, Wisconsin, which suit was defended by the Dent Hardware Company, defendant herein, said Dent Hardware Company employing its own counsel, and officers and employees thereof giving evidence on behalf of the then defendant, Sanitary Refrigerator Company. Said suit was heard on the eighteenth and twenty-first days of February, 1927, and at the end of the hearing Judge Geiger, of District Court of the Eastern District of Wisconsin, rendered an opinion sustaining said patent as to its validity and holding that the refrigerator latches used by the Sanitary Refrigerator Corporation were an infringement of said letters patent aforesaid. A decree in conformity with said opinion was entered on the twenty-fourth day of February, 1927, a certified copy of which is ready to be produced in court.

VIII. The latches used by said Sanitary Refrigerator Corporation and which were held in infringement of plaintiffs' letters patent aforesaid, were manufactured and sold by said Dent Hardware Company. The Dent Hardware Company manufactures these latches in various sizes and has persistently solicited refrigerator manufacturers with respect thereto, has reduced prices which plaintiffs have had to meet to a greater or less extent in order to save business in such latches, and have generally, greatly and irreparably damaged and injured plaintiffs by its infringement of said patent and have deprived plaintiffs of profits which would otherwise have been received, and have secured great gains and profits itself, which, in equity, belong to plaintiffs and should be accounted for by said defendant and paid to plaintiffs.

IX. Plaintiffs are without adequate remedy, save in a court of equity, where matters of this nature are properly cognizable.

X. Plaintiffs pray: (1) That defendant be required to answer this bill of complaint, but not under oath, answer under oath being expressly waived; (2) That a subpœna, *ad respondendum* be issued by the clerk of this court, directed to the defendant to answer the bill of complaint; (3) That a preliminary injunction be issued restraining the defendant, its officers, agents, employees and confederates from infringement of the aforesaid letters patent during the pendency of this suit; (4) That a permanent injunction be issued restraining the defendant, its officers, agents, employees and confederates from any further infringement of the aforesaid letters patent in suit; (5) That defendant account for and pay to plaintiffs its profits and plaintiffs' damages arising from said infringement, and (6) That plaintiffs have such further relief as the premises and equities may require.

ALEXANDER F. WINTERS,
BASIL R. CRAMPTON.

CYRUS N. ANDERSON,
Solicitor for Plaintiffs.

FRANK E. LIVERANCE, JR.,
Counsel for Plaintiffs.

STATE OF MICHIGAN,
COUNTY OF KENT, } *ss.:*

ALEXANDER F. WINTERS, being first duly sworn, deposes and says: that he is one of the plaintiffs named in the foregoing bill of complaint; that he has read said bill of complaint and knows the contents thereof; and that same is true to the best of his knowledge, information and belief.

Subscribed and sworn to before me this 8th day of March, 1927. } ALEXANDER F. WINTERS.

GEORGE HOLLOWAY,
(Seal) *Notary Public,*
Kent County, Mich.
My commission expires July 25, 1928.

STATE OF MICHIGAN,
COUNTY OF KENT, } *ss.:*

BASIL R. CRAMPTON, being first duly sworn, deposes and says: that he is one of the plaintiffs named in the foregoing bill of complaint; that he has read said bill of complaint and knows the contents thereof; and that same is true to the best of his knowledge, information and belief.

Subscribed and sworn to before me this 8th day of March, 1927. } BASIL R. CRAMPTON.

GEORGE HOLLOWAY,
(Seal) *Notary Public,*
Kent County, Mich.
My commission expires July 25, 1928.

ANSWER.

(Filed April 27, 1927.)

To the Honorable, the Judges of the Above-Entitled Court:

The answer of the above-entitled defendant to the bill of complaint exhibited against it by the above-named plaintiffs.

I. Defendant admits the averments respecting its incorporation, and place of business.

II. Defendant admits that this cause arises under the patent laws of the United States, and that this Court has jurisdiction.

III. Defendant admits that prior to December 7, 1920, Alexander F. Winters and Basil R. Crampton were residents of the City of Grand Rapids, in the County of Kent, and State of Michigan, but denies that said plaintiffs were the original, first and joint inventors of certain new and useful improvements in a latch; denies that said improvements were not known or used by others in this country before their invention thereof; denies that they were not patented or described in any printed publication in this or any foreign country before the invention thereof; denies that they were not in public use or on sale in the United States or described in any patent or printed publication anywhere for more than two years prior to their application for patent therefor in the United States; denies that they were not patented in any country foreign to the United States on an application filed by them or their legal representatives or assigns, more than twelve months prior to their application for patent therefor in the United States and denies that said improvements have not been abandoned.

IV. Defendant admits that said Alexander F. Winters and Basil R. Crampton made application on the seventh day of December, 1920, to the Commissioner of Patents for the grant of Letters Patent of the United States for the said improvements, and admits that after due proceedings were had, Letters Patent No. 1,385,102, for said improvements duly sealed, countersigned, and executed were issued to said Alexander F. Winters and Basil R. Crampton, but defendant denies that said letters patent were issued in due form of law, and denies that there was vested in them, their legal representatives and assigns, for the term of seventeen years from and after the nineteenth day of July, 1921, any exclusive rights and allege the contrary to be true.

V. Defendant denies that the plaintiffs are now and have been at all times since the nineteenth day of July, 1921, joint and exclusive owners of said Letters Patent No. 1,385,102, and the inventions therein described, disclosed and claimed and of all rights and privileges granted and secured thereby, and leave plaintiffs to make full proof thereof. Defendant has no knowledge whether or not plaintiffs are owners of 98 per cent. of the capital stock of the corporation, Winters and Crampton Manufacturing Company, where it is alleged that the latch of said letters patent has been manufactured and sold and leaves plaintiffs to make full proof thereof. Defendant denies that large sums of money have been invested and expended and great trouble and expense in and about said invention have been borne for the purpose of developing the same and introducing it into use and making the same profitable to plaintiffs and the corporation with which they are connected, and useful to the public. Defendant denies that said corporation is equipped and has the necessary capital and facilities for supplying

all demands for the invention under said patent, promptly, at a reasonable cost and at maximum efficiency. Defendant denies that plaintiffs have fully advised the public and the defendant of its ownership of said patent aforesaid, and denies that the defendant has persisted in infringement of any valid claim of said patent after notice.

VI. Defendant denies that the latch construction developed by plaintiffs is very useful, attractive in appearance and effective mechanically, and denies that it had an immediate sale in large quantities and was eagerly accepted by refrigerator manufacturers, displacing other types of latch constructions before used by them. Defendant denies that great commercial demand for the latch constructions in accordance with the aforesaid patent of plaintiffs as created and denies that in a very short time large orders for said latch constructions were received and have been continuously received since about the first of the year 1921 to the present time.

VII. Defendant denies that it has manufactured and sold a latch construction closely imitating plaintiffs wherein the differences are not discernible to ordinary observers; defendant denies that it has infringed the patent in suit since the issuance of said patent in the Eastern District of Pennsylvania or elsewhere.

Defendant denies that it plans to interfere and has interfered with the business which plaintiffs have developed, and denies that it has infringed said patent in defiance of plaintiffs' rights, and denies that plaintiffs have been greatly and irreparably damaged or are being so damaged, and that plaintiffs are deprived of profits which they would otherwise make under said patent.

VIII. Defendant admits that plaintiffs heretofore brought suit under their patent aforesaid against the Sanitary Refrigerator Company, a Wisconsin corporation, located at the City of Fond du Lac, Wisconsin, and defendant admits that said suit was defended by the same counsel as are defending this suit, and that certain officers of the instant defendant testified in behalf of said Wisconsin defendant.

Defendant further avers that notwithstanding plaintiffs counsel cross-examined defendant's witnesses in said Wisconsin suit, there is no proof whatever in the records of said Wisconsin suit that said suit was defended by the Dent Hardware Company, and this defendant therefore denies the same, and leaves plaintiff to make full proof thereof.

Defendant admits that said Wisconsin suit was heard on the eighteenth and twenty-first days of February, 1927, during the absence of defendant's regular patent counsel; defendant admits that at the end of said hearing Judge Geiger rendered an opinion of one page making no reference to the claims of the patent here in suit, and making no reference to prior art patents in which opinion said Court mistakingly sustained said patent, and held that the refrigerator latches of the Sanitary Refrigerator Company were an infringement of said letters patent aforesaid, and that a decree of the usual form for plaintiffs was entered on February 24, 1927.

IX. Defendant further answering avers that it has taken and perfected an appeal from said decree to the Circuit Court of Appeals for the Seventh Circuit, and has filed a supersedeas bond in the sum of $5000 so that all proceedings in the District Court in Milwaukee are stayed pending the determination of said cause in the Circuit Court of Appeals for the Seventh Circuit.

X. Defendant admits that the Sanitary Refrigerator Company's latches were manufactured and sold by said Dent Hardware Company, and that the latter manufacture said latches in various sizes. Defendant denies that it has reduced prices which plaintiffs have had to meet to a greater or less extent and allege the contrary to be true; defendant denies that it has greatly and irreparably damaged plaintiffs by its infringement of said patent, denies that it has deprived plaintiffs of profits which would have otherwise been received, denies that it has secured great gains and profits which in equity belong to plaintiffs, and should be accounted for by said defendant and paid to plaintiffs.

Defendant denies that plaintiffs are without adequate remedy, save in a court of equity, where matters of this nature are properly cognizable.

Further answering, defendant avers that prior to the alleged invention of Alexander F. Winters and Basil R. Crampton, set forth in the letters patent sued upon, the said alleged invention had been patented or described in the following Letters Patent of the United States, and that, therefore, said letters patent sued upon are null and void, namely:

J. D. Simmons, No. 62,078, Feb. 12, 1867;
P. L. Maltbie, No. 310,900, Jan. 20, 1885;
J. A. Baldwin, No. 403,173, May 14, 1889;
H. F. Keil, No. 554,448, Feb. 11, 1896;
A. D. Fritts, No. 632,009, Aug. 29, 1899;
H. H. Dent, No. 670,506, Mch. 26, 1901;
A. Charles, No. 702,185, June 10, 1902;
J. A. Gregg, No. 871,269, Nov. 19, 1907;
P. C. Wiest, No. 934,253, Sept. 14, 1909;
E. Raaths, No. 1,022,872, Apr. 9, 1912;
T. O. Schrader, No. 1,114,296, Oct. 20, 1914;
T. O. Schrader, No. 1,117,709, Nov. 17, 1914;
T. O. Schrader, No. 1,170,685, Feb. 8, 1916;
A. D. Ward, No. 1,250,736, Dec. 18, 1917;
T. O. Schrader, No. 1,265,120, May 7, 1918.

XI. And, further answering, the defendant avers that prior to the alleged invention of the said Alexander F. Winters and Basil R. Crampton, in Latches, set forth in the letters patent sued upon—the said alleged invention was known to and used by the foregoing persons, at various places, and that therefore said letters patent are null and void.

XII. Defendant further avers on information and belief that the invention of said Winters and Crampton patent was known to and used by others in this and foreign countries, and is patented and described in other letters patent of this and other countries, the prior uses and names of which persons and the numbers and dates of which letters patent are at present unknown to defendant, but which when ascertained defendant prays leave to insert by amendment in its answer.

XIII. Defendant, further answering, avers that the Letters Patent No. 1,385,102 to Winters and Crampton, herein sued upon are null and void, because the subject matter therein set forth and claimed is not patentable under the laws of the United States in view of the state of the art relating to the manufacture and use of latches, and further avers that the subject matter of said patent involves no more than an ordinary expedient of good workmanship and mechanical skill, over prior constructions.

XIV. Defendant, further answering, avers that the claims of the letters patent sued upon cannot be construed to cover or include anything ever made, sold, or used by this defendant, and that they are invalid and ineffectual for such purpose, not only because of the cancellations of the declarations amounting to disclaimers, and of the express limitations and restrictions made or assented to by said patents in their ap-

plication for said letters patent, and moreover, made or assented to in consequence of rejections and objections by the Patent Office, which were acquiesced in by the applicants as a prerequisite to obtaining the allowance of their said letters patent as finally issued, all as disclosed by the file-wrapper of said letters patent, ready in court to be produced.

XV. Defendant further answering, and in conclusion, denies that it has ever at any time or at any place made, sold or used the alleged invention or substantial and material parts thereof described in the letters patent recited in the bill, and made the subject matter of the claims thereof when properly construed, and denies that it intends to do so.

All of which matters and things this defendant is ready and willing to aver, maintain, and prove, as this Honorable Court shall direct, and therefore prays that the bill of complaint herein may be dismissed with its reasonable costs, charges and disbursements in this behalf most wrongfully sustained, and to be taxed.

THE DENT HARDWARE COMPANY,
By H. H. DENT,
President.

HENRY P. NEWHARD,
Secretary.

E. HAYWARD FAIRBANKS,
Solicitor and Counsel for Defendant.

STATE OF PENNSYLVANIA,
COUNTY OF PHILADELPHIA, *ss.:*

H. H. DENT, being duly sworn according to law, deposes and says that he is president of the Dent Hardware Company, defendant herein; that he has read the foregoing answer by him subscribed, and knows the contents thereof, and that the facts therein set forth are true to the best of his information and belief.

Sworn to and subscribed before me this 22d day of April, 1927. } H. H. DENT, *Pres.*

NETTIE BUSSINGER,
(Seal) *Notary Public.*
Commission expires March 2, 1929.

PLAINTIFFS' STATEMENT OF EVIDENCE.

(Filed October 17, 1927.)

It was stipulated and agreed that printed copies of patents be received in evidence with the same force and effect as certified copies subject to any correction of errors. It was further stipulated that the Dent Hardware Company received notice of the patent in suit in the spring of the year 1925. It was stipulated that an exhibit heretofore filed in this cause marked "Plaintiffs' Exhibit C" is a correct representation of the structure manufactured by the defendant and is identical with the structure which was before Judge Geiger; and that the structure heretofore filed and marked "Plaintiffs' Exhibit B" correctly represents the structure of the plaintiffs' patent in suit.

Patent No. 1,385,102 issued July 19, 1921 was offered in evidence as Plaintiffs' Exhibit A. The exhibit marked "Plaintiffs' Exhibit B" the latch struc-

ture of the patent in suit, was offered in evidence as Plaintiffs' Exhibit B. The latch structure marked and identified as "Plaintiffs' Exhibit C," the defendant's latch structure, was offered in evidence as Plaintiffs' Exhibit C.

BASIL R. CRAMPTON, lives at Grand Rapids, Michigan; is engaged in the business of manufacturing refrigerator hardware and associated with Winters & Crampton Manufacturing Company. He owns 48 per cent. of the stock of that company. Mr. Winters owns 48 per cent. and Mr. Bouwkneckt owns the remainder.

He is the Basil R. Crampton who appears as one of the inventors in the Patent No. 1,385,102 for Latch issued July 19, 1921. Neither he nor Mr. Winters has sold any interest in this patent since its issuance.

He had sold latches to the Sanitary Refrigerator Company of Fond du Lac, Wisconsin, beginning in 1921 and sold the same until some time in 1925. The reason for not selling them after that time was that the Dent Hardware Company quoted a lower price on a similar article.

CROSS-EXAMINATION.

The particular latch that the Sanitary Refrigerator Company bought from the Dent Hardware Company was not a smaller latch than that sold by Winters & Crampton to the witness' recollection who had personal knowledge of the transaction and conducted it.

There are two general types of refrigerators, one known as commercial, a large box used in big butcher shops, and the other as household refrigerators. The testimony of the witness at Milwaukee shows that Winters & Crampton sold approximately 90 per cent. of

the commercial refrigerators with a latch covered by the patent in suit. There are about five or six refrigerator latch manufacturers in the country, some of which do not manufacture commercial hardware. Witness testified that he (his company) sold 90 per cent. of the commercial refrigerators their latches. The total of the latches of the type of the patent in suit sold in the year 1925 was about 400,000 and were identical with Exhibit C in the various sizes.

XQ. 28. You know, do you not, that practically every refrigerator latch that was ever used automatically locks when the door is shut?

A. Certainly not.

XQ. 29. The greater proportion of them do?

A. Not a great proportion, no.

XQ. 30. What proportion would you say?

A. Probably 50 per cent.; when this latch was brought out on the market practically 75 per cent. to 80 per cent. of the latches were non-automatic used on refrigerators.

They did not automatically lock when the door was slammed shut but locked by hand exertion. The Condit and Conroy were practically the only two that were being used when the type of lock of the patent in suit came into use. The witness had never heard of automatic refrigerator fasteners made by the Dent Hardware Company under the Dent patent prior to 1920, but had heard of the Conroy patent made by the Dent Hardware Manufacturing Company. At the time that the article of the patent in suit came on the market the majority of the locks made by the Dent Hardware Company did not automatically lock when the door slammed shut.

Winters & Crampton put out two latches or fasteners prior to the patent in suit, one of which was withdrawn from the market and of the other very little use is being made.

A certified copy of the decree of Judge Geiger in the suit brought by Alexander F. Winters and Basil R. Crampton on the Patent No. 1,385,102 in suit was offered in evidence as Plaintiffs' Exhibit D.

HARRY C. DENT, of Allentown, Pennsylvania, is a manufacturer of refrigerator hardware. He had heard of the suit brought by Winters & Crampton on patent No. 1,385,102 against the Sanitary Refrigerator Company of Fond du Lac, Wisconsin. The Dent Hardware Company undertook the defense of the suit; paid the bills; hired counsel; and directed the furtherance of the appeal to the Court of Appeals in the Seventh Circuit.

DEFENDANT'S EVIDENCE.

HARRY C. DENT is vice-president of the Dent Hardware Company, connected therewith about sixteen years as assistant sales manager, and also is in intimate touch with the manufacturing end. He is familiar in a general way with the mechanical end of the refrigerator latch business.

The fastener shown by the Dent patent granted in 1901, No. 670,546, and like the specimen which is offered in evidence as Defendant's Exhibit No. 1, has been manufactured by the Dent Hardware Company since 1901, used very extensively since that time and still enjoys a large sale. Since the patent was issued millions of them have been manufactured.

Q. 11. When that latch stands horizontally, and you slam the door, is the door automatically locked?

A. That is the end of it.

Q. 12. If this latch lever stands vertically, and you slam the door, will the door automatically lock?

A. Yes, sir.

THE COURT: Apparently there is a difference in the principle of operation.

MR. FAIRBANKS: There is a mechanical difference, yes, Judge; yes, indeed; I agree with that.

THE COURT: One seems to be a cam operation and the other a gravity operation.

MR. FAIRBANKS: In a way, yes, sir.

The witness looked at the Keil Patent No. 554,448 granted in 1896 and stated that it had been on the market and is still on the market today. Asked about the numbers manufactured, he could not state how many, because the Dent Hardware Company was not the manufacturer, but would say that it enjoyed a wide sale at one time. He further stated that specimen of the Keil patent mounted on a door would automatically lock whether it was in a horizontal position or a vertical position.

The Dent Patent No. 670,506 was offered in evidence as "Defendant's Exhibit No. 2."

The specimen of the Keil patent was offered in evidence as "Defendant's Exhibit No. 3."

The patent to Keil No. 554,448 was offered in evidence as "Defendant's Exhibit No. 4."

The following patents to T. O. Schraeder, No. 1,114,296, granted October 20, 1914, marked "Defendant's Exhibit No. 5"; No. 1,117,709, granted November 17, 1914, marked "Defendant's Exhibit No. 6"; No. 1,170,685, granted February 8, 1916, marked "Defendant's Exhibit No. 7"; and No. 1,265,120, granted May 7, 1918, and marked "Defendant's Exhibit No. 8," were shown the witness and he was asked whether or not the structures in

such patents had been manufactured by the Dent Hardware Company heretofore and approximately to what extent.

The question was objected to as wholly immaterial to the issue in this cause. Witness answered that No. 1,114,296 is one of the fasteners which they are manufacturing today and substantially the same form as shown by the patent being manufactured to the extent of 100,000 per year. No. 1,117,709 was made by the Dent Hardware Company after 1914, which manufactured many thousands of them in three years. No. 1,170,685 has been manufactured since the patent was issued, and this fastener on the market for two or three years was sold in goodly quantities. No. 1,265,120 was manufactured by the Dent Hardware Company in considerable quantities and is still used to some extent. The Schraeder patents referred to were offered in evidence as Defendant's Exhibits 5, 6, 7 and 8, respectively, and objected to as wholly immaterial. Mr. T. O. Schraeder lives in Allentown, Pennsylvania.

The witness would say that several millions of fasteners had been manufactured under the four Schraeder patents and that they now get repeat orders for this same type of fastener.

The device complained of in the suit shown by the Schraeder Patent No. 1,575,647, granted March 9, 1926, has been made by the Dent Hardware Company to the extent of at least 100,000 and there are now orders on hand for future delivery of this type of latch.

The Schraeder patent last above referred to was offered in evidence as "Defendant's Exhibit No. 9."

Q. 26. After this patent we are now talking about was issued to your corporation, on March 9th, 1926, did your company go into the manufacture of this latch

in good faith and under the advice of counsel, thinking you had a right to make it?

MR. LIVERANCE: Objected to as wholly improper, irrelevant and immaterial. The issuance of this patent to the Dent Hardware Company gave no right to manufacture anything, if they were previously infringing an earlier issue patent. It gave them a right to exclude others from manufacturing what is covered by the Schraeder patent, but does not give a right to manufacture. There is no provision in the patent laws that permits anything like that; and, the decisions of the Courts, excepting a few mistaken decisions of earlier years, are in accord against any principle which tries to intimate that the issuance of a patent to anyone gives them a right to manufacture.

By MR. FAIRBANKS:

Q. 27. I now show you lines 57 to 74, on page 2 of your Patent No. 1,575,647, which I will ask you to read to the reporter, for the record.

A. "I am aware of Patent No. 1,385,102 dated July 19, 1921, and I disclaim the structure therein disclosed, as my invention is differentiated therefrom, since whereas the structure disclosed, in said patent utilizes a pin 12 carried by the latch arm 11, which co-acts with an upper cam edge 18 of the keeper member 17; in my novel construction the upper edge of my keeper plate B-3 has no function, but the pivotal latch C-6, carries a cam C-1 inclined to the pivot of said latch and adapted to co-act with a pin B-8 carried by and laterally projecting from, the inner wall of the keeper plate B-3 thereby to swing the terminal tongue of the latch into the horizontal locking position; and to none of the constructions of the prior art do I herein make claim."

MR. LIVERANCE: It is moved that the matter just read by the witness be stricken from the record. The patent speaks for itself. This portion read is wholly immaterial to the issues in this cause, which are concerned not with what Schraeder did not invent, but with what Winters & Crampton did invent, and what it covers. Also, it is believed that it is contrary to the rule of the Federal Court to read matters from publications into the record.

By MR. FAIRBANKS:

Q. 28. Have you any recollection of about the time this patent was granted which we are now talking about, which was in the month of March of last year, my writing to your corporation and calling your attention to the matter you have just quoted?

MR. LIVERANCE: In order to lessen the record and to avoid interminable objections to questions of this nature, or relating to the Schraeder Patent No. 1,575,647, counsel for the plaintiff, with the consent of counsel for defendant, will enter a general objection to anything of that kind, on the ground that it is wholly immaterial, in accordance with the decision in Herman v. Youngstown Car Manufacturing Company, 191 Federal, at page 579, in which volume, on pages 584 and 585, the immateriality of the issuance of a patent to a defendant as relating to the question of an infringement is completely and concisely set forth; and, this general objection is to apply to all questions relating to this patent.

MR. FAIRBANKS: I shall make my reply to Mr. Liverance later, in the defendant's brief. But, I desire to point out that there are numerous decisions in the Federal Supreme Court, District

Courts, and Courts of Appeal which show that the granting of a patent to the defendant raises a clear presumption that there are physical, structural differences which in many cases has turned the scale on the item of infringement.

By MR. FAIRBANKS:

Q. 29. Do you remember getting a letter from me——

A. I don't remember it.

Q. 30. Anyhow, in view of your patent protection, your corporation has proceeded in good faith, and under the advice of counsel, in the manufacture of these latches here complained of?

A. We did.

The witness was present during Mr. Crampton's testimony and heard it and heard him say that 90 per cent. of the commercial refrigerator manufacturers were equipped with latches or fasteners like the patent in suit and to the best of his knowledge and belief the statement is incorrect. The witness travels throughout the United States and is familiar in a general way with what the principal manufacturers of commercial refrigerators are using in the way of fasteners and he would say that 50 per cent. would be more nearly right as to the commercial refrigerators using plaintiffs' latch, Exhibit B.

The witness stated that of commercial refrigerator manufacturers there are between twenty-six and thirty, possibly thirty, and as to household refrigerator manufacturers approximately thirty-three, making a total for both of sixty-three.

Q. 40. I show you a transcript of Mr. Crampton's deposition in Milwaukee, on or about February 18th, 1927, which you have seen before, and ask you to run through Mr. Crampton's testimony briefly, and to state

to the Court any inconsistencies or incorrect statements therein which you find.

A. On page 4, in answer to the question: "To what extent is the latch shown by the patent in question used by refrigerator companies?" The answer is: "On commercial refrigerators, groceries and hotels and butcher-shops, about 90 per cent. use this principle." I would say that that statement is incorrect, to the best of my knowledge.

On page 5 is this question: "What percentage of those commercial refrigerators does your company sell?" The answer there is: "All, except about two or three." I would say, to the best of my knowledge and belief, that that statement is incorrect.

On the same page appears this question: "Do you sell this latch to any household refrigerator companies? The answer is: "Yes." Next question: "What companies?" Answer: "Sanitary Refrigerator Company, we did; the Illinois Refrigerator Company; the Bowen Refrigerator Company; the Arlington Refrigerator Company and the Tennessee Furniture Corporation." The statement with reference to the Tennessee Furniture Corporation is incorrect.

On page 8, under cross-examination, appears this question: "With reference to your statement that 90 per cent. of the commercial refrigerators use your latch, you don't mean to state they use only that latch, that they are purchasers from your company?" Answer: "I meant 90 per cent. of the volume of hardware used on commercial refrigerators was our latch." I would say that that statement is incorrect.

The witness would say that Mr. Crampton's testimony in Milwaukee that all but two or three manufacturers of commercial refrigerators were using the latch of his patent was incorrect. And stated that of the commercial refrigerators and household refrigerator

manufacturers thirty-three were customers of the Dent Hardware Company.

The Dent Hardware Company was organized in 1894 and witness would say that it was one of the largest manufacturers of refrigerator hardware. The witness knew that Winters & Crampton had two latches on the market prior to 1921 which are not on the market today.

A specimen of the Charles Patent No. 702,185 was offered in evidence as "Defendant's Exhibit No. 10," and the Charles Patent No. 702,185, granted June 10, 1902, was offered in evidence as "Defendant's Exhibit No. 11," both being shown the witness who stated that the specimen conformed to the drawing in the patent.

Q. 47. Will you also please state whether or not the latch member of that Exhibit 10 which you have in your hand, will automatically lock when standing horizontally or vertically?

A. It will.

Q. 48. I ask you the same question in regard to your father's early fastener, of 1901, and the fastener of the Keil Exhibit No. 3; will the latch levers of those two structures lock automatically when standing in a vertical or horizontal position?

A. They will.

Witness named the manufacturers of refrigerator latches or fasteners in their order of their importance as Grand Rapids Brass Company, Dent Hardware Company, Winters & Crampton, Artistic Bronze Company, Arcade Manufacturing Company and Keeler Brass Company. Witness said he had earlier stated that in a general way plaintiffs' business under the plaintiffs' patent in suit was 50 per cent. of the total business in commercial refrigerators but now thinks that such statement as to 50 per cent. is high and he would be more inclined to say that 30 per cent. would be more nearly correct. And that the claim of Win-

ters & Crampton that they were furnishing 90 per cent. of all the fasteners used on commercial fixtures was to the best of his knowledge incorrect. He further said that they did not cut prices in the case of Sanitary Refrigerator Company but what they actually did was furnish a smaller fastener at less money. That they are well-known, a long established house and have well established prices for all this merchandise.

CROSS-EXAMINATION.

The Dent Hardware Company sold latches like those illustrated in the Schraeder Patent No. 1,575,647 before the date of the issue of the patent on March 9, 1926. They had applied for a patent and witness understood that having made application for patent it was permissible to manufacture the article. It was his understanding of the patent law that applying for a patent gave a right to manufacture.

By order of importance in the list of latch manufacturers given by him he meant the importance of size or importance of the volume of business that they transact.

XQ. 62. Total business, whether they made latches for refrigerators and other goods?

A. I would say principally fasteners, because that is a big business.

XQ. 63. In the order of importance of refrigerator latch manufacturers alone, do not Winters & Crampton make as many refrigerator fasteners as all the rest combined?

A. They do not.

XQ. 64. What is the total latch business of the country over, for refrigerator latches—how many latches?

A. I haven't the figures available.

XQ. 65. About two and a half millions?

A. I don't know.

XQ. 66. You don't know how many Winters & Crampton made?

A. I haven't the data available now, as to what Winters & Crampton are doing.

XQ. 67. Then, your answers this morning, have been guesses?

A. No.

XQ. 68. You don't know how much Winters & Crampton make?

A. No.

XQ. 69. And you don't know the total volume of latch business over the country?

A. I can give you the exact figures, but not now.

XQ. 70. You can tell me, approximately, whether two and a half million latches for refrigerators is about right, can you not?

A. Why, I would say that probably more than two and a half million latches were used on refrigerators in this country, in the course of a year, for all purposes.

XQ. 71. Household and commercial refrigerators?

A. Yes.

XQ. 72. How many more?

A. Well, I should think about three and a half millions.

Witness did not have available the figures of latches made by the Dent Hardware Company for refrigerators for last year but can say they made considerably more than three hundred thousand also would say that they made nearly 100,000 of the Dent structure like Defendant's Exhibit No. 1 for commercial and domestic refrigerators sold to the Herrick Refrigerator Company of Waterloo, Iowa.

XQ. 79. How long would the refrigerator latch of Defendant's Exhibit No. 1 hold a tight pivot after it was in use?

A. Well, it might stay there for a very long time; it is riveted tight.

XQ. 80. After a dozen blows of the door in closing, it would loosen that pivot so it would drop down almost to a vertical position, wouldn't it?

A. It might or it might not.

XQ. 81. Isn't that the actual practice, in the case of refrigerators equipped with this latch, Defendant's Exhibit No. 1?

A. When the door is closed, the handle is down, yes.

XQ. 82. What I mean is, that within a week, or after this handle has been operated and the door opened and closed a dozen or two dozen times, the pivot becomes so loose that the handle always remains down when the door is open?

A. Well, I have seen it a great many times with the handle staying up.

XQ. 83. You call this latch the Dent latch?

A. I call it the Standard Fastener; it is manufactured by the Dent Hardware Company.

XQ. 84. It has been called the Dent latch, in years past, has it not?

A. It has not.

XQ. 85. Did you ever hear it called the Conroy latch?

A. Never did.

XQ. 86. Did you ever hear of the Conroy patent?

A. Yes.

XQ. 87. Issued in 1885?

A. I don't know when it was issued.

XQ. 88. The Conroy patent is identical with this structure, is it not?

A. No.

XQ. 89. What is the difference?

A. The Conroy patent had the handle riveted between two lugs, with a round pin. The pin feature of

the standard fastener was that the handle instead of having a round hole drilled through it had a hole like this (illustrating), slotted so that when the fastener closed, the cam part rested on the plate of that part of the fastener holding the handle. That was the feature that the Conroy did not incorporate.

XQ. 90. What is the difference in the principle and operation of this and the Conroy structure?

A. Well, the principle reason for making the fastener as I have described was to take the strain off of the pin when the fastener was closed.

XQ. 91. There was no difference in principle of operation, however?

A. I don't know of any particular difference. There may have been other minor differences.

MR. LIVERANCE: Plaintiff offers in evidence Conroy Patent No. 332,495, issued December 15th, 1885, as Plaintiffs' Exhibit "E."

Witness testified that he knew the Tennessee Furniture Corporation does not use spring lever locks like Winters & Crampton patent in suit because of a letter addressed to the Dent Hardware Company stating the different kinds of fasteners they had used during the past year and had no other evidence except their statement of what they were doing.

The testimony of the witness respecting the Tennessee Furniture Corporation heretofore given was objected to as being purely hearsay. He did not know other than what the letter stated that the Tennessee Furniture Corporation does not buy latches like those made in accordance with the plaintiffs' patent from Winters & Crampton today. He does not know how many latches the Grand Rapids Refrigerator Company now called the Leonard Refrigerator Company uses in a year. He would say that Winters & Crampton sold

latches to Grand Rapids Refrigerator Company but does not know that it furnished them with if not their entire requirement almost their total supply. He cannot answer the question.

XQ. 99. If the Leonard Refrigerator Company used 700,000 latches in 1925, bought from Winters & Crampton, is not that more than double the output of latches you made during that year?

A. I would say, no.

Witness cannot give the exact figure of how many refrigerator latches were made by his company during 1925, not even approximately without given data.

He travels west of the Mississippi River, but not farther than St. Louis. He knows the Omaha Fixture & Supply Company as small manufacturers and the Viking Refrigerator Company he would not consider a large manufacturer and the Koch Butchers Supply Company of Kansas City he would not consider a small manufacturer. The Hoffman Refrigerator Company is a large manufacturer.

XQ. 111. How many latches do you sell to the commercial refrigerator manufacturers outside of the Legonier Corporation and C. V. Hill?

A. I haven't those figures available, to give you.

Witness said that the Dent Hardware Company sold both Legonier and Hill.

XQ. 114. Why do you make refrigerator latches like Exhibit "C," when you say there are so many other refrigerator latches that can be used in place of it?

A. Why, because we had a call for a latch of that type.

XQ. 115. Did you ever call on the Hussman Refrigerator Company in St. Louis—Mr. Hussman himself—trying to sell them refrigerator latches or locks like Plaintiffs' Exhibit C, except larger in size?

A. Yes.

XQ. 116. Did you quote them a price considerably under Winters & Crampton's prices?

A. I didn't know what Winters & Crampton's price was, so far as the latches Mr. Hussman was using, are concerned. Our prices were based on our cost, plus a reasonable margin of profit.

XQ. 117. You don't know whether it was under Winters & Crampton's price?

A. I do not.

XQ. 118. You don't know whether or not your price to the Sanitary Refrigerator Company was under that of Winters & Crampton's?

A. Well, the only way I can tell that is by the statement that was made by the opposition, to the effect that we cut our prices.

XQ. 119. Let me see if I get your position right, you considered and have been advised, that an application for a patent, or the issuance of the patent, gives to you a right to manufacture the goods which are shown by said application or patent; is that correct?

A. I make that statement because of the reason that I have seen, time and time again, articles placed on the market that were simply marked "patent applied for." I, therefore, took it that they were within their rights in going ahead and making the article after applying for a patent.

XQ. 120. You are not a patent attorney?

A. No.

XQ. 121. And do not understand the question of infringement?

A. I should say, no.

XQ. 122. Do you know the volume of commercial refrigerator latches made and sold in the United States —the approximate figures—can you give the approximate figures as to such volume?

A. I cannot.

PLAINTIFFS' REBUTTAL EVIDENCE.

BASIL R. CRAMPTON stated that they first began manufacturing refrigerator latches like the patent in suit and as shown in Plaintiffs' Exhibit B in the early part of 1921. He gave as an approximate estimate of the number of latches in all sizes made since in accordance with such patent and exhibit as about two and one-half million. The witness stated that he had heard of the Condit latch and that it was very much in production and being used when the latch of the patent in suit came on the market. Its operation is different from plaintiffs' latch, the Condit latch being pivotally mounted on the door casing and swung across the meeting edges of the door and door casing and across a cam on the door. With the Condit latch with the latch mounted on the door casing if it drops to horizontal position when the door is opened, the door would not close but would strike against the end of the lever. This would not happen in the latch of the patent in suit. Witness gave his estimate of the total number of refrigerator latches, household and commercial, which were made each year at about two and one-half millions, of which Winters & Crampton made a little under one million eight hundred thousand last year and four hundred thousand in accordance with the patent in suit.

Q. 15. Upon what, do you base your estimate of 90 per cent., or approximately 90 per cent. of the volume of commercial refrigerator latches made up in accordance with the structure and principle of your patent in suit?

A. For the amount of business we do, and deducting that from the other types that are used.

Q. 16. Do you consider the Legonier Corporation and C. V. Hill latch as made in accordance with the principles of your patent in suit?

A. I do.

There is one latch manufacturer of commercial refrigerators, the McCray Refrigerator Company, that has used the Condit latch, but witness has been informed by this company that they are going to discontinue the Condit latch but have not decided as to the type of latch they will use. The witness personally has submitted samples of his own latch to the McCray Company for this new departure and has submitted a latch like the one covered by the patent in suit. The McCray Company says there are too many other companies using these latches and do not want to imitate their competitors.

Winters & Crampton right now sell latches like the patent in suit to the Tennessee Furniture Corporation. Not as many as they used to, but they still have some orders from them. Their other latches, not in accordance with the patent in suit, are furnished, most of them, to the extent of 95 per cent. by Winters & Crampton.

The witness produced and read from a catalog of Winters & Crampton names of commercial refrigerator manufacturers to whom Winters & Crampton sell latches of the patent in suit. This list appears on page 21 of the catalog and gives the places where the companies are located. The catalog was offered in evidence as "Plaintiff's Exhibit F."

Winters & Crampton sold the Leonard Refrigerator Company from July, 1925, to July, 1926, about 700,000 latches. The Winters & Crampton Company are the largest manufacturers of refrigerator hardware in volume of refrigerator latches and make nothing else except a little kitchen cabinet hardware. The Grand Rapids Brass Company makes other things besides refrigerator hardware, so does the Dent Hardware and the Keeler Company.

The Winters & Crampton Company started to manufacture hardware in the early part of 1918 and has reached its present position since that time.

Attention being called to the latch, Defendant's Exhibit No. 1, the witness stated that the name that he had always known this latch was by that of the Conroy fastener.

Q. 41. I ask you how long a latch, even if riveted as tightly as that, would remain tightly riveted in service?

A. Depending how many times it was slammed in a day, and how hard. Under usage, such as in a grocery store, perhaps two or three days.

Q. 42. In that case, the latch lever, when the door was open, would always remain vertical?

A. It would.

Witness testified that this is the way it normally operates and after the door is closed a push is applied to the latch handle to wedge it tightly closed.

Attention being called to the latch, Defendant's Exhibit No. 3, witness stated that the latch did not stand at a horizontal unless it was riveted tight and if so riveted it would hold for about two or three dozen slams of the door if slammed hard enough.

Q. 47. I call your attention to a certain exhibit, which is substantially identical with Defendant's Exhibit No. 1, and ask you to look at that latch and state whether or not that is the normal operation of the so-called Conroy latch, or so-called Dent latch, as it has been previously called?

A. Yes.

Some discussion between Mr. Fairbanks and Mr. Liverance took place as to when this exhibit was first produced and what patent it was made under and it was agreed that this last exhibit had been on the market twenty years and Mr. Liver-

ance thought it had been on the market since 1885 when Conroy first produced latches of that type. This latch mounted on the door was offered in evidence as "Plaintiffs' Exhibit B."

CROSS-EXAMINATION.

By MR. FAIRBANKS:

XQ. 48. Mr. Crampton on the eighteenth day of February, exactly three months ago to the day, you swore, in Milwaukee, that at that time you had made about 2,000,000 latches embodying the principles you brought out in the patent in suit, is that correct?

A. Yes.

XQ. 49. You told us today, three months later, that you put out a year two and a half millions. Do you mean to tell the Court that you made and sold a half million of these latches in three months?

A. I didn't make any such statement.

XQ. 50. Then, I did not hear your statement correctly?

A. Probably you did not.

XQ. 51. What did you mean when you said you made two and a half million latches, what latches were they?

A. He asked me how many we had made, of this type, since we started, and I said a little over two million.

XQ. 52. Tell us, now, Mr. Crampton, what the exact facts are. In Milwaukee, you swore, on February 18th, that you had made 2,000,000 latches of the patent in suit?

A. Yes.

XQ. 53. This afternoon you swore that you had, up to date, made two million and a half. If you didn't say that, please tell us what the exact facts are?

A. The question asked me was how many refrigerator latches were made or used in the country a year, and I said two and a half million, since we started manufacturing.

XQ. 54. In Milwaukee, on February 18th, when you swore that you had made 2,000,000 latches, were those latches exactly like Plaintiffs' Exhibit B?

A. Yes, since we have started.

XQ. 55. Today, if I get your testimony straight, you swore that up to today, you made two and a half million of these latches?

A. No.

XQ. 56. That is not right?

A. I didn't say anything like that.

XQ. 57. Tell us what you meant to say. I want to help get the thing straight?

A. It is all right.

XQ. 58. What were you talking about when you said you made two and a half million latches to date?

A. The question asked me was, how many refrigerator latches were made per year. I said, about two and a half million. That was followed by another question as to how many we made last year, and I said slightly under one million eight hundred thousand, last year.

XQ. 59. How many of these latches like Exhibit B, have you made between February 18th, and May 18th, to date, about?

A. One hundred thousand.

XQ. 60. At the time you testified, on February 18th, before Judge Geiger, in Milwaukee, as to these 2,000,000 fasteners had you gone over your books, personally, and accurately counted every one of those 2,000,000 latches, or were you just guessing at it?

MR. LIVERANCE: That is objected to. Mr. Crampton testified in Milwaukee as to the approxi-

mate number of latches which they had made, as in round numbers, 2,000,000. It might have been 2,000,000 or considerably more, or a few less. That was not put in as the exact number of latches made. I wish this on the record, so that the Court might understand on what basis Mr. Crampton answered the question in Milwaukee.

By Mr. Fairbanks:

XQ. 61. Please answer the question.

A. We went over our books and checked up.

XQ. 62. Did you do it, personally?

A. With our bookkeeper, yes.

XQ. 63. You did it, personally, did you?

A. With our bookkeeper.

XQ. 64. I am not talking about the bookkeeper. Did you do it, personally?

A. That would be personal, two of us.

XQ. 65. You did not do it personally?

A. No, not alone, no.

XQ. 66. All you know is what somebody told you——

A. No.

XQ. 67. What do you mean?

A. I examined the books, myself.

XQ. 68. You counted them up, checked them up, those 2,000,000?

A. I did, along with him.

XQ. 69. How long did it take you?

A. About two days.

XQ. 70. You checked up 2,000,000 in two days?

A. Yes.

XQ. 71. Did you do the checking, or did the bookkeeper do it?

A. He read them off to me from the books, and we checked them back.

XQ. 72. How were they identified on the books?

A. By date and numbers.

XQ. 73. What was the particular number of those under this patent in suit?

A. 400.

XQ. 74. Will you please produce true and correct copies of your records, so that I can check those up for myself, as to the number of 400?

MR. LIVERANCE: That is objected to as being entirely unreasonable. We are willing to produce the compilation taken from the books, which is hereby offered in evidence as Plaintiffs' Exhibit "H," showing the latches for the years 1921 to 1926, inclusive, the grand total of which is 2,095,746.

MR. FAIRBANKS: That is objected to as immaterial, irrelevant and incompetent. It is simply hearsay, or secondary evidence. It has not been identified by anyone as being a true and correct transcript from the plaintiffs' books, but, apparently, something gotten up by a bookkeeper or some outsider. It has not been sworn to in this cause.

MR. LIVERANCE: Proper identification of the exhibit will be made later.

By MR. FAIRBANKS:

XQ. 75. The latch conforming to the drawings of your patent in suit, Plaintiffs' Exhibit "B," is No. 400?

A. Yes.

XQ. 76. And, according to your own figures, here they only total up to 1,001,113; is that right?

A. Of that one size. There are eleven sizes.

XQ. 77. You just told me that this latch was No. 400?

A. That is the particular number of that latch, yes.

XQ. 78. You make them in seven or eight different sizes?

A. Eleven different sizes.

MR. FAIRBANKS: I renew my objection to the offer of the last exhibit. There is no proof of its authenticity; merely what the bookkeeper or somebody else told the witness.

MR. LIVERANCE: The testimony is that he and the bookkeeper, personally, compiled this list, not somebody else?

THE WITNESS: Yes.

Asked about the list of customers on page 21 of the catalog attention was called to the legend at the top of this list: "A Partial List of Refrigerator Manufacturers Using Our Locks and Hinges" and witness was asked to segregate from the list read off the parties who bought hinges and the parties who bought latches. He answered that the list he read was commercial refrigerator manufacturers to whom Winters & Crampton do not sell hinges as Winters & Crampton do not manufacture hinges for commercial refrigerators.

XQ. 79. Then, the legend at the top of this list here is very misleading, where you say: "Refrigerator Manufacturers Using Our Locks and Hinges."

A. There is nothing confusing about it at all. There is a list of household refrigerator manufacturers printed directly underneath that, who use both our locks and hinges.

Witness said that they did not sell any hinges whatever to commercial refrigerator manufacturers because they do not manufacture a heavy type of hinge.

With the exception of the illustration on page 16 of the catalog all of the latches illustrated on pages 9 to 17 are of the type known as the "trip lock fast-

eners." Of the list of commercial refrigerator concerns two purchase the "trip lock fastener," the Piggly Wiggly Company and the Herrick Company. All the rest purchase the fastener like the one in suit and the Piggly Wiggly purchase both types, the trip lock and the one like Exhibit B.

The witness estimated that the total number of fasteners for refrigerators made during the last year was approximately two and one-half million, of which Winters & Crampton made a little under 1,800,000, leaving 700,000 fasteners for the other five concerns to manufacture. Asked if he did not know the defendant's company alone made over one million fasteners a year, the witness stated that he did not believe that the Dent Hardware Company made one million fasteners for refrigerators in 1926. Asked how the other five concerns live on the remaining volume of business, it was answered that they manufacture other products and that is how they live.

XQ. 99. What authentic, accurate data have you for this figure of 2,500,000 fasteners, made in the year 1926?

A. From experience and long connection with the refrigerator industry that I have had.

He had been connected with the refrigerator industry before going into the manufacture of refrigerator hardware in 1918, and refrigerator manufacturers have never hesitated in advising the witness as to the approximate amount of refrigerator fasteners they use annually. He did not take his estimate from any authentic books but only has the word of the refrigerator manufacturers.

(Objection was made by counsel for the defendant to all the previous answers as to the estimate of two and one-half million refrigerator fasteners as being incompetent, irrelevant and immaterial—secondary evidence.

Of the 1,800,000 refrigerator fasteners made in 1926 400,000 were of the type shown by Exhibit B in the different sizes and the remainder of the spring trip latch. Witness relied on the books and records of the Winters & Crampton Company for this information which he checked up himself personally with the help of the bookkeeper.)

XQ. 111. Did the bookkeeper help you?

A. He did.

XQ. 112. You didn't personally count those up, did you?

A. No.

XQ. 113. You took the word of the bookkeeper, did you not?

A. No.

XQ. 114. You did it yourself, personally?

A. Personally, with the bookkeeper.

XQ. 115. Anyhow, all you know about these two and a half million is simply what other manufacturers told you; is that right?

A. No. If we made a little under 1,800,000 latches in 1926, there is good evidence that there must be two and a half million refrigerator latches made in 1926.

XQ. 116. Please answer the question.

A. No; that is not the only information.

XQ. 117. What was your other source of information?

A. I just gave you that answer.

XQ. 118. Answer it again, please; what other source besides what other manufacturers told you?

A. If we made 1,800,000 refrigerator latches in 1926, that is evidence that there must be two and a half million latches made annually, or in 1926.

XQ. 119. We do not agree with you at all. I am talking about the total of two and a half million. As I understand, all you know about it is that you made

so many, and some other people told you how many they made, is that right?

A. Yes, refrigerator manufacturers that we did not obtain their business, informed me of their approximate requirements which, added to the amount of business we obtained in 1926 aggregated around two and a half millions.

XQ. 120. That is, from what somebody told you, you figured it to be about two and a half millions?

A. I have every reason to believe the refrigerator manufacturers told me the truth.

XQ. 121. Answer the question.

A. Other than that, I have no evidence.

XQ. 122. All you know about this is the difference between what you made and what you are guessing at, what some other people told you; isn't that so?

MR. LIVERANCE: The intent is to get a "yes" or "no" answer to the question. This witness explained how he obtained his information and, necessarily, must do so in order to give a truthful answer, one which is not only the truth, but the whole truth; and, it is submitted that his answer to the question has been correct.

THE WITNESS: Yes.

By MR. FAIRBANKS:

XQ. 123. Four or five other manufacturers besides yourself made up this balance of 700,000 latches, which is the difference between what you say is your output and the two and a half millions. Please give the names of the other manufacturers.

A. Mr. Dent gave the correct names of the manufacturers, I can repeat them.

XQ. 124. I wish you would, setting beside each name, how many latches or fasteners they made.

A. The Dent Hardware Company, Grand Rapids Brass Company.

XQ. 125. How many did each of those concerns make?

A. You are asking me something—do you want that list now.

XQ. 126. I want opposite each name the number of latches they made.

A. I cannot give you that list, what each one made.

XQ. 127. I want to know how you make up the difference of 700,000?

A. I explained it to you about seven times.

XQ. 128. No, you haven't explained it at all. Please give the names of each manufacturer, and in addition, the number of latches they made. I want to see how you get the figure of 700,000, can you do it?

A. Taking it as a whole, I can, but not separately.

XQ. 129. I want it separately.

A. You will have to get it from them.

XQ. 130. Then, you just guessed at it, didn't you?

A. No, no guess work.

XQ. 131. Just give the best guess as to the four or five other concerns—as to what they made—so that we can find out how you make up the total of 700,000. Do the best you can. If you can do it, please do so.

MR. LIVERANCE: This is further objected to as entirely improper, immaterial and irrelevant, and I ask that it be stricken from the record.

THE WITNESS: Dent, I would say, made last year, approximately 250,000 refrigerator locks.

XQ. 132. Who, Dent?

A. Yes, Dent. I have no actual proof, but got this information from refrigerator manufacturers themselves.

Grand Rapids Brass Company, probably 350,000.
Keeler Company, probably 50,000.
The Arcade Company 50,000.

I would like to change the Grand Rapids Brass to about 250,000.

The Artistic Company 25,000.

There are two Artistic Bronze Companies, you know.

The National Lock Company perhaps made 75,000 refrigerator latches.

XQ. 133. You give the Dent Hardware Company, the defendant, credit for a quarter of a million fasteners for the year 1926?

A. Yes.

XQ. 134. Suppose I should tell you that you were three-quarters of a million or 750,000 fasteners out of the way; would that alter your views any?

A. I do not believe they made that many for refrigerators. They might have made that many including their other hardware products, tobacco cases, but not for domestic or commercial refrigerators.

XQ. 135. As a matter of fact, you know nothing whatever about what the Dent Company's output was, except what somebody told you?

A. What the refrigerator manufacturers told me, yes.

XQ. 136. What somebody told you?

A. What the refrigerator companies told me, not what "somebody."

RE-DIRECT EXAMINATION.

The witness stated that the compilation shown by plaintiffs' Exhibit H was made in the early part of February, this year. The bookkeeper's name he worked with was Harvey Bouwkneckt. The figures were taken from the regular books kept in the course of business. They were compiled just prior to the trial of the Sanitary suit. The figures were read off by both the wit-

ness and the bookkeeper who alternated and took turns at it.

RDQ. 145. When you say our "400 line," what does that mean?

A. It means the 400 line, made in several sizes, such as 401, 405, 410, 415 and 420.

RDQ. 146. Does the catalog which has been introduced in evidence as Plaintiffs' Exhibit "F," show the different sizes with the numbers going with them?

A. It does.

RDQ. 147. In whose handwriting are these figures?

A. Mr. Bouwkneckt's.

RDQ. 148. Did he make the pencil notations at the end, also?

A. No, sir; I did that.

RE-CROSS-EXAMINATION.

RXQ. 149. Your catalogue, Exhibit F, is not entirely complete, is it? It does not show quite all of your items?

A. Not quite all of the items in it.

RXQ. 150. Which numbers on this Schedule H are missing from this catalogue?

A. 401, 375, 387 and 385.

RXQ. 151. What documentary evidence have you to link up numbers 401, 375, 387 and 385 with the latch of the patent in suit?

A. It is identically the same structure, except made up in odd sizes which we do not care to submit to the trade.

RXQ. 152. Please answer the question.

A. Samples in our factory.

RXQ. 153. You have not answered the question yet?

A. I have no documentary evidence here.

RXQ. 154. Where is it?
A. At the factory.

MR. LIVERANCE: The question and answer are objected to as improper. The witness is testifying from recollection, remembrance, and such recollection, remembrance is substantiated by his continuous connection actively with the business, and his knowledge of the numbers which they make and sell. Documentary evidence does not exist with respect to these numbers, but the witness, from his own knowledge, testifies to such numbers and testifies that he knows that they are of the 400 line in accordance with the patent in suit; and it is admitted that the cross-examination should be as to the witness' personal knowledge, what he knows, himself.

MR. FAIRBANKS: In view of the witness' last answer, that he has no documentary evidence here to substantiate his statement that the latch numbers 401, 375, 387 and 385 are linked up with the patent in suit, I renew my objection to any consideration of this paper, Plaintiffs' Exhibit H. No further questions.

HARRY C. DENT, recalled, testified that he was present and heard the testimony of Mr. Crampton wherein he gave his estimate for the fiscal year ending in 1926 for the Dent Company as 250,000 refrigerator latches. The witness stated that he had testified previously that the Dent Company made approximately one million fasteners, but he finds, however, upon checking up their records since that time that the Dent Hardware Company sold 685,683 latches, these consisting of 186,476 latches of the so-called spring type and 499,307 of other types such as the Dent latch. This amount of latches

sold is two to three times as much as Mr. Crampton estimated the Dent Hardware Company manufactured. Following Mr. Crampton's figures of having made 1,800,000 latches out of the total of two and one-half million which Mr. Crampton said were manufactured during 1926, this would leave practically no fasteners to be manufactured by other larger concerns during that period.

It was pointed out by counsel for plaintiffs that Mr. Crampton testified that his company made 1,800,000 latches for refrigerators and it was his estimate that the Dent Hardware Company made 250,000 fasteners for refrigerators at the same time conceding that the Dent Hardware Company made fasteners for soda fountain doors, tobacco humidors as well as other articles which Winters & Crampton do not attempt to supply.

Q. 3. Having reference, now, to Mr. Crampton's testimony in general, as to the volume of his business as compared with the business of other manufacturers, have you any figures or facts which go to show any inconsistencies or discrepancies in his testimony; if so, will you please state them?

A. In going over the record, I find that Mr. Crampton testified in Milwaukee, that he sold 90 per cent. of the volume of fasteners in suit. He also stated that since 1921 he has manufactured approximately 2,000,000 of these fasteners. That is an average of 333,000 per year for a six-year period. Yesterday he testified that during the year 1926 he made 1,800,000 fasteners. Of this, 400,000 being of that type of the patent in suit; a difference of, approximately, 133,000 per year more than the average for a six-year period—that would bring it down to a difference of, approximately, 66,000 per year more than the average for a six-year period.

MR. LIVERANCE: For the year 1926?

THE WITNESS: Yes. It is hard to reconcile these figures, inasmuch as the sale of the fastener of the patent in suit is, and has been, on the decline for a year or more and is being superseded by the so-called spring type of fasteners. He testified as to having sold 1,800,000 of all types, and 400,000 of the type of the patent in suit, which would show that he has sold, according to his statement, 1,400,000 fasteners of the so-called spring type.

MR. LIVERANCE: The answer is objected to as argumentative, as wholly immaterial to the question; and, it is pointed out that a discrepancy of 66,000 for the last year on a latch which has been going six years, between the sales of the last year and the average for the six years, is not only inconsistent, but is perfectly consistent, for the reason that the general average for the six years is materially reduced by reason of the small sales for the first year when it was first offered on the market, as shown by Plaintiffs' Exhibit H, wherein the total sales for the first year were only 169,745; for the second year, 319,348; for the third year, 366,985; the fourth year, 474,593; the fifth year, 390,182; and the next year, sixth year, 374,894. If the latch in suit had jumped immediately to a grand average for the full six years in the first year, and had not varied or increased for the succeeding years, it would be something which never occurred in any other line of business, previously.

CROSS-EXAMINATION.

Witness stated that the number of latches which he says the Dent Hardware Company made during 1926 were sold to refrigerator manufacturers and distributors of refrigerator hardware.

XQ. 5. Did you sell any to manufacturers of store fixtures?

A. No; we don't sell them.

XQ. 6. Did you sell any to the Garden City Plating Company, of Chicago?

A. Yes.

The Garden City Plating Company are manufacturers as well as distributors and the hardware sold by them finds its way into the hands of refrigerator manufacturers to the best of the witness' knowledge. He does not know this for a certainty other than that they issue a regular refrigerator catalogue bulletin. To the best of witness' knowledge and belief the Garden City Plating Company of Chicago manufactures store fixtures and store fixture hardware and it sells a large volume of hardware consisting of miscellaneous items, most of which finds its way into the hands of store fixture people for the reason that this is one of their lines of business. Witness has no knowledge as to the fact that the Garden City Plating Company is primarily concerned with store fixture business.

Asked how many of the 700,000 in round numbers refrigerator latches were sold direct to refrigerator manufacturers by the Dent Company, witness did not have the data available giving that information, but that it was much over 250,000.

XQ. 14. Yesterday you said that the Herrick Manufacturing Company bought 100,000 of the Dent or Conroy type of latch. How many refrigerators a year do the Herrick Manufacturing Company make?

A. I don't think that the record will show that I made any such statement.

XQ. 15. I may be mistaken, but my understanding is that you testified to a sale of 100,000, approximately, of the Conroy or Dent fastener, and that you sold this fastener only to the Herrick Manufacturing Company. In so far as the refrigerator trade is concerned,—what

I am trying to find out is how many of these fasteners went to the refrigerator companies. I understood you to say that the Herrick was the only one you sold to as a refrigerator company; is that correct?

A. No; there are other concerns that we sell to.

XQ. 16. Which ones?

A. I am unable to mention any particular ones just at this moment.

XQ. 17. The Herrick makes about 12,000 refrigerators a year, do they not?

A. I have no knowledge of the exact amount of refrigerators the Herrick Company makes in the course of the year.

XQ. 18. They make a high-grade refrigerator?

A. They are supposed to make high-grade refrigerators.

XQ. 19. And in small amounts compared to the others?

A. The Herrick Refrigerator Company is not the largest refrigerator company in the country, but they have been manufacturing a line of refrigerators for a great many years, and so far as we know, they build a high-grade refrigerator.

XQ. 20. Do you know how many fasteners for refrigerators you sold the Herrick Company last year?

A. You are speaking of this particular fastener?

XQ. 21. Of the Dent type?

A. I would say that we sold them, in round numbers, 52,000.

Re-Direct Examination.

On re-direct examination a catalogue of refrigerator hardware of the Dent Company, marked Volume C, was offered in evidence as Defendant's Exhibit No. 12; and a large catalogue designated Volume B was offered in evidence as Defendant's Exhibit No. 13.

This latter being a catalog of the Dent Hardware Company for refrigerator hardware and refrigerator specialties. The witness stated that thirty-three of the sixty or more refrigerator manufacturers were customers of the Dent Company, some of them being the largest manufacturers of refrigerators, and of the list on page 21 of the Winters & Crampton catalog several concerns are customers of the Dent Company and that several are listed of which the witness has never heard before. The Dent Hardware Company sells the customers which the witness referred to both fasteners and hinges, but not all of their supply of latches, as there are very few refrigerator manufacturers today who buy their entire requirements from one source of supply. Of the total 700,000 fasteners they sold yearly 186,476 were of the spring type, the balance were of other types which included the fastener shown at the upper part of page 8 of the catalog, Defendant's Exhibit No. 12. The witness was unable to tell approximately the number of the particular fasteners referred to on said page 8. He could not say whether half of them were of that type.

He identified the latch shown on the opposite page 9 as the Condit type.

HUGO GIBSON, of Philadelphia, a consulting engineer, qualified as an expert in patent suits on the basis of general education at the City of London School, Finborough Technical School, Finborough, London. After completion of the engineering course he had been associated with various manufacturers and electrical concerns in the practice of mechanical and electrical engineering. He had previously acted as expert in patent suits including the Selden automobile. He

had previously made inventions and taken out patents on the same.

Witness said he was familiar with the patent in suit, its drawings, specification and claims and the structure shown and described. He had also seen and was familiar with the physical specimens of the plaintiffs' and defendant's latches in dispute.

Q. 6. Generally speaking, what would you say was the function of the refrigerator latches or fasteners which you have seen or may be familiar with?

A. The function is practically the same as that of the ordinary latch of a common door, to hold it closed, to permit of it being opened and more particularly to permit of its being opened easily, without undue effort.

Q. 7. How about the automatic locking feature of these latches you have referred to when the door is slammed; is or is not that generally present in these fasteners?

A. It is present very frequently, and for many years past it has been, but not in all latches.

Refrigerator latches generally consist of two elements, a latch and a keeper. The keeper sometimes has been placed upon the door jamb and sometimes upon the door and sometimes the latch has been upon the opposite member.

Referring to the specification of the patent in suit, No. 1,385,102, witness stated that the statement of the invention referring to a Condit latch was not a complete reference to the prior art and at the time of application for the patent there were many other latches which in general accomplished the object intended.

The witness read into the record, lines 37 and 45 of Patent 1,385,102 and in answer to a question stated that there was no novelty, as that object is or was accomplished by several very old patents. The witness referred to the Keil Patent No. 554,448 and also an ex-

hibit of the Keil structure, Defendant's Exhibit No. 3, and stated:

> "Both this patent of 1896 and the physical example of the Keil latch, show us a latch in which the keeper is fastened to the jamb. The latch proper is fastened to the door, and the relations of the latch to the keeper are such that the door can be slammed shut irrespective of the position that may be occupied by the handle of the latch. That is to say, that if the handle of the latch should happen to be in either a horizontal position or vertical position while the door is being closed, the latch will automatically fasten the door to its casing. Furthermore, this latch has the purpose of providing a leverage, so that the door may be broken away from its seal when it is closed and more readily opened thereby."

Witness also said that the specimen of the latch and keeper shown by Defendant's Exhibit No. 1 conforms to the Dent Patent of 1901, No. 670,506, and that the handle or latch will trip when the door is closed, no matter whether the latch is in horizontal or vertical position and is also further provided for breaking the seal of the door and rendering it more easy to open.

Witness was shown the next patent in point of time, that of Charles, June 10, 1902, and also an exhibit conforming thereto, marked "Defendant's Exhibit No. 10," and stated that such physical specimen was a construction under the Charles Patent of 1902 and that the lever will trip and operate for closing the door whether the lever is in vertical or horizontal position and the arrangement provides a means for opening the door and breaking the seal readily. In all three exhibits, Keil, Dent and Charles, there is provision for standing the door open when the latch is actuated and the latch lever will automatically trip when the door is slammed no matter whether it is in vertical or horizontal position.

MR. FAIRBANKS: Counsel for defendant now offers in evidence defendant's file wrapper as "Exhibit No. 14," and the same is shown the witness.

By MR. FAIRBANKS:

Q. 18. Mr. Gibson, now, let us consider separately, the keeper and latch lever of the plaintiffs' patent, the file wrapper of the patent in suit; and, in this connection I now hand you the file wrapper of the patent in suit, and direct your attention to the original claim 7, which was cancelled. Will you please read that original, cancelled claim 7 into the record and state whether or not the structure in that claim 7 conforms to the plaintiffs' keeper—structure as being in Plaintiffs' Exhibit B.

MR. LIVERANCE: That is objected to as entirely irrelevant and immaterial to any issue in this cause. No claim in the patent is directed to the keeper and the issues of this cause are not concerned with the dead and cancelled claim in the file wrapper history. Moreover, the file wrapper history of this patent, speaks for itself.

THE WITNESS: (After reading claim 7). It does describe the structure of the keeper of the patent, and also the Plaintiffs' Physical Exhibit "B."

By MR. FAIRBANKS:

Q. 19. Will you please, now, turn to the next page of the Patent Office action of April 15th, 1921, and read into the record that action?

MR. LIVERANCE: The same objection; it is entirely immaterial.

The Office action of April 15, 1921, was read, showing the rejection of claim 7 as not patentable over the patents to Keil, 554,448 and Ward, 1,250,-

736 and further showing that the remaining claims were allowed, and making reference to three patents to show the art in amending. These three patents were No. 670,506 to Dent; No. 743,716 to Hadka; and No. 1,238,876 to Blye. The patentee's response was to cancel claim 7. There was only one Office action in the case.

Q. 21. You have already briefly explained as to the Keil patent which the Patent Examiner cited in connection with the cancelled claim 7. I wish you would briefly refer to the Ward Patent No. 1,250,736 which the Examiner stated, in substance, showed the plaintiffs' keeper, and just explain as to the keeper of the Ward patent, briefly.

MR. LIVERANCE: I make the same objection.

THE WITNESS: The keeper of the Ward patent of 1917 is covered by the wording of the cancelled claim 7.

Q. 22. In view of the plaintiffs' transactions in the Patent Office, and in view of the disclosures of the Keil and Ward patents just referred to, what would you say as to the plaintiffs' keeper?

A. There is no novelty whatever in the plaintiffs' keeper, and they acknowledged that in cancelling the claim.

MR. LIVERANCE: As far as any claim in the patent is directed to the keeper, no charge has ever been made of an infringement of the keeper, *per se,* not only by the plaintiff acknowledging that the keeper, itself, was not new in its transcript in the Patent Office, but it acknowledges on the record, that so far as the keeper is concerned no claim is made for infringement of the keeper alone. The infringement charge is made to the claims which are in the patent, not to the claim which has been cancelled by the Patent Office.

Q. 23. Now, let us take up the other principle of the plaintiffs' device, and that is a lever which is defined in claim 5 of the patent in suit. Will you please read claim 5 into the record, and say whether or not there is any novelty in the plaintiffs' latch or lever as defined in said claim 5, making reference to any prior patent of which you may have knowledge?

In making your answer, please refrain from construing such a claim, as that is the province of the Court, and please confine yourself solely to the mechanisms involved in that.

A. Claim 5 of the patent in suit reads as follows:

> "In a latch of the character described, a supporting member adapted to be attached to a door, and a latch lever pivotally mounted between its ends thereon, said lever including one arm extending from the pivot, a handle portion extending in the opposite direction from the pivot, and a second arm extending from the handle portion adjacent to the pivot and in a direction substantially at right angles to the first arm, substantially as described."

This claim covering a latch lever discloses a lever with a handle portion and two projections in different directions; and I find that it is clearly descriptive of the latch of Ambrum & Olfermann, which was patented on April 22d, 1873, and intended for use in connection with icebox refrigerator doors.

This lever of Ambrum & Olfermann's has a handle portion, a projection in line with the handle portion on the other side of the pivot, and a projection substantially around the pivot and at approximately right angles to the first projection.

In the Simmons patent of 1867, there is shown a lever having a handle portion, a projection on the other side of the pivot opposite to the handle portion, and a lever or arm projecting at approximately right angles to the line of the first two portions mentioned, and situated in the locality of the pivot.

The Charles patent of 1902 has a projecting latch lever, pivotally mounted, and including one arm extending from the pivot, a handle portion extending in an opposite direction from the pivot, and a second arm extending from the handle portion adjacent to the pivot, and in a direction substantially right angles to the first arm. I am here quoting from the wording of claim 5 of the patent in suit.

The Weist patent of 1909 has all of the elements referred to.

The Raaths patent of 1912 has a latch lever pivotally mounted, this lever including one arm extending from the pivot and a handle portion extending in an opposite direction from the pivot; a second arm extending from the handle portion adjacent to the pivot, and in a direction substantially at right angles to the first arm. This Raaths patent was a tripping door latch.

The parts of the latch, and their disposition, as stated in this claim, are clearly shown in the patents referred to, especially in the case of the Ambrum & Olfermann of 1873, the Charles patent of 1902 and the Raaths patent of 1912.

MR. FAIRBANKS: I offer in evidence the Ambrum & Olfermann patent referred to by the witness as Defendant's Exhibit No. 15; the Simmons patent as Defendant's Exhibit No. 16; the Weist patent as Defendant's Exhibit No. 17, and the Raaths patent as Defendant's Exhibit No. 18.

The defendant also offers in evidence the Ward patent as Defendant's Exhibit No. 19.

The defendant further offers in evidence a colored plate containing a radius scale concerning all the patents referred to wherein the lever element is clearly red-marked. This is offered as Defendant's Exhibit No. 20.

By Mr. Fairbanks:

Q. 24. Will you please, now, consider Claim No. 6 of the patent in suit which calls for an addition to the structure of claim 5 which you have already discussed, the elements of cam surfaces on the arms—please refer to any patents you may have knowledge of which show the structure defined in the plaintiffs' claim 6, which you may read into the record.

A. Claim 6 of the patent in suit reads as follows:

> "A latch containing the elements in combination defined in claim 5, said arms on their inner sides being formed with cam surfaces, substantially as described."

It is clear that the latch lever of Ambrum & Olfermann had not only the elements of claim 5, but it also has the cam surfaces which are called for in claim 6. These cam surfaces are at the end of the two arms of the Ambrum latch lever. The arms of the Simmons patent operate as cams; therefore, have the cam surfaces. The arms of the latch lever of the Charles patent have cam surfaces, exactly as described in claim 6. So for the arms of the Weist patent, and in the Weist patent the door latch lever there shown has cam surfaces upon each of the two arms, and upon their inner sides.

I should have also said that the Ambrum latch lever has this cam surface—these cam surfaces upon their inner sides; also, the Charles and Simmons.

Q. 25. In view of your recent discussion of the plaintiffs' keeper, and the plaintiffs' latch lever, considered individually, or *per se*, what would you say as to the novelty of each?

> Mr. Liverance: That is objected to, as the answer will invade the province of the Court; and, is an attempt to construe the claim which a previous question asked the witness not to do.

THE WITNESS: Since these prior patents that I have referred to show the elements called for in claims 5 and 6, those elements were, obviously, not novel.

By MR. FAIRBANKS:

Q. 26. Will you please state exactly what in your judgment as an engineer these plaintiffs may have invented?

MR. LIVERANCE: That is objected to as irrelevant and immaterial. The patent speaks for itself for the Court to construe.

By MR. FAIRBANKS:

Q. 27. In making your answer, you might refer to claim 2 of the patent in suit, if you want to.

A. I have read claim 2 of the patent in suit, and I find just one item therein which might be considered an invention, and that is the provision of surfaces on the upper side of the keeper for a specific purpose in this case, that purpose being the co-action with what is in that claim called a second arm of the latch lever, whereby the co-action of that keeper, upper side, and that arm will cause the latch to trip when it is in a vertical position. Otherwise, the remainder of the claim seems to cover prior patents.

Q. 28. Will you now, please, consider briefly claims 1, 3, 4 and 7 of the patent in suit, and point out the elements in those claims which are characteristic or definitive of what the claims may have involved, invented?

A. I have read claims 1, 3, 4 and 7. In the case of claim 2 I could co-relate the second arm referred to in that claim as projecting from the handle portion, a distance from the pivot as to its use with the portion of the keeper referred to in the claims, as formed with upper and lower curved outer sides, etc., but in order

to do so, I would have to read the drawings and decide thereby that that was what was intended to be accomplished.

As to claim 3, which contains in general terms, in referring to means on the keeper and means on the latch lever to accomplish certain objects, I would in this case have to turn to the drawings, and I would then clearly understand what those means were, and what they were intended to accomplish.

Therefore, by considering the drawings I would say that the co-action of the upper curved surface of the keeper with the lever arm which is placed at a distance from the pivot, is the item which the inventors of the patent in suit had in mind and invented.

Referring to claim 4, where two arms of the latch lever are referred to, one of which is engaged with the outer portion of the keeper when the door is moved to a closing position, would swing the lever from vertical position to a horizontal position, I believe that those words cover the invention, and, here again, one would have to refer to the drawing in order to determine which outer portion of the keeper was to be used for this purpose.

In claim 7, it would be also necessary to refer to the drawings, in order to understand just how the second arm referred to in that claim was to engage with the keeper in order to carry out the invention of the inventors, and in that engagement, in my opinion, lies the invention, and not otherwise.

Q. 29. Will you please now, consider claim 3 of the patent in suit, and state whether or not you find the elements therein substantially present in the Keil and Dent patents, or in the physical specimens, Defendant's Exhibits Nos. 3 and 1?

A. In claim 3 there is specified that in combination with the door and casing, there is a keeper attached to the casing and the latch lever pivotally con-

nected to the door. I find those elements both in the patents referred to and in the physical specimens.

The claim says that the latch lever shall be engaged with the keeper to hold the door in a closed position, and that arrangement is clearly present in both the patents and physical specimens.

Means are called for in that claim, on the keeper and other means on the latch lever, to engage with the keeper on the outer sides thereof, to swing the lever into engagement with the keeper at the inner sides thereof when the door is closed, with it in either vertical or horizontal, and those means are clearly found in both the patents and the physical exhibits of Keil and Dent.

Q. 30. Will you please now, describe this claim 3 in connection with the Charles Patent No. 702,185, and the Defendant's Exhibit No. 10, and say whether or not you find in said Charles—the exhibits and patents —substantially the elements recited in said claim 3.

A. Except for the fact that in the Charles patent and the Charles physical exhibit, the latch lever is placed upon a door post or jamb and is applied to the door which is simply a reversal of position. Inasmuch as the Charles physical exhibit could have been constructed in the opposite manner, I find that claim 3 describes the latch and keeper of the Charles device perfectly.

Q. 31. Please, now, take up defendant's structure as exemplified in Plaintiffs' Exhibit "C," which I now hand you, and then Defendant's Patent No. 1,575,647, granted March 9th, 1926, and explain any differences and advantages which you may find in said defendant's structure as compared with the plaintiffs' structure.

MR. LIVERANCE: Objected to as immaterial. Whether or not the defendant made any improvement over Winters & Crampton is not material to this question. The question is not about any ad-

vantages, improvements or inventions which the defendant's structure may disclose, but whether the defendant's structure incorporated what is exclusively granted to Winters & Crampton in their patent.

A. (Continuing.) I have examined the patent of the defendant, also the Physical Exhibit "B" of the plaintiffs, which is the defendant's latch, and I find the outstanding difference between the defendant's and the plaintiffs' latches lies in the fact that there is no use whatever made of the upper edge of the keeper, for any purpose whatever in the operation of the latch.

There is an upper edge present, as there has to be in every keeper of this general form; but, it is not formed or arranged to function in any manner.

The upper edge that I am referring to would do the same thing as is referred to in the plaintiffs' patent in suit. In the words "side or sides" as found in the specifications and claims.

In fact, the defendant's keeper has only two so-called sides or edges for the functioning of the lock, and those sides or edges are found in several of the old patents that I have previously referred to.

The second great difference between the defendant's and the plaintiffs' keeper lies in the provision by the defendant, in his patent and in this exhibit, of the special structure of lug projection standing out from the side of the keeper toward the door, and this latch and this projecting lug has a very important, valuable and new function in the operation of door latches, especially of those which are intended for use on refrigerators and iceboxes, where the requirement is that the latch shall be capable of fastening the door tightly by the mere act of slamming the door, and without the aid of manual operation of the latch. This projecting lug of the defendant's keeper is part of the valuable invention that the inventor Schraeder made. It is ar-

ranged to co-operate with the novel arrangement of cam surfaces, located as close as possible to the pivot portion of the body of the handle or latch. The remainder of the latch handle of the Schraeder invention consists of an arm projecting from the pivot portion and arranged to engage with the common, single, outer edge and the locking inner edge of the keeper, while the handle used for manual operation of the latch projects from the pivot portion of the latch in an opposite direction to this arm.

The Schraeder latch accomplishes a new object in that when icebox doors having fully automatic latches thereon are slammed, by pushing the door rapidly toward the closure, there is always a great tendency to break off or damage portions of the latch or keeper, due to the hammer-like blow that is received by the pivot latch and the keeper.

It is clear to me that the cam-like portion of the Schraeder latch, placed as it is in such close-coupled relation to the pivot portion, and arranged as it is to strike upon the projecting lug of the Schraeder keeper invention, it will be subjected to the least possible strain when under the shock of impact on slamming the door; and consequently, the whole structure is less liable to damage from such impact shocks than would be the case where the impact shock is taken by a portion of the latch which is far removed from the pivotal point. Consequently, the Schraeder latch would be longer-wearing, less liable to breakage, and may be constructed in a lighter manner than locks otherwise arranged.

Q. 32. What would you say as to the length of the radius or range of actuation of the top, oblique cams, which co-act with the lateral extending inner lug or pin of the keeper——

Mr. Liverance (Interrupting): Same objection as heretofore made.

By Mr. Fairbanks:

Q. 33 (Continuing.) Is there any advantage in this feature, and state whether or not you find it to be a development of the general structure present with the four or five Schraeder patents referred to in Mr. Dent's examination?

A. In my previous answer, I referred to the cam or striking portion of the defendant's latch as being close-coupled to the pivot portion, and by that I meant that the striking cam portion is at as short a radius as possible from the pivot. This short radius is in contradiction to the long radius which is evident in the plaintiffs' patent in suit, and the physical exhibit "B."

The second arm referred to in that patent in suit is specified to be, and is necessarily, at a distance from the pivot point, and being so placed brings about the excessive strain and liability of distortion or breakage of the lever arm, and when such breakage does occur it would, naturally, occur at the narrow neck portion of the plaintiffs' structure, next to the pivot, and would render the latch lever inoperative whereas in the defendant's structure, it would be impossible to destroy the operativeness of the latch by this means, on account of the close-coupling of the cam portion to the pivot portion, or on account of the short radius at which that cam portion is provided in relation to the pivot portion.

I have examined the various Schraeder patents, and I find this close-coupled cam of the latch lever, and the co-acting projecting lug of the keeper in the Schraeder Patent No. 1,114,296 of 1914, and in fact, Mr. Schraeder seems to have had the value of this close-coupling of the initial striking portion of the lever very much in mind in several of his patents which illustrate that feature very clearly.

Q. 35. Please look at lines 57 to 72 on page 2 of the Schraeder Patent No. 1,575,647, and read the same

into the record, and say whether or not that is a fairly accurate and correct statement as to certain of the differences between plaintiffs' and defendant's devices.

MR. LIVERANCE: That is objected to as wholly immaterial, the question in this case being concerned with what Winters & Crampton invented, and what the Dent Hardware Company have appropriated from the Winters & Crampton patent in suit, and is in no way concerned with the Schraeder patents nor any differences which it might recite.

The witness replied that there was a correct statement of the differences between these devices.

Q. 36. Please, now, look at plaintiffs' and defendant's devices as embodied in the physical exhibit, Plaintiffs' Exhibit "B" and Plaintiffs' Exhibit "C," and consider the same purely as mechanisms, and state whether or not if the defendant's lever was substituted for the plaintiffs' lever, in the plaintiffs' device, the plaintiffs' device would be operable?

A. It would not.

Q. 37. I now ask you the same question with respect to the keeper, if defendant's keeper was substituted for the plaintiffs' keeper in plaintiffs' device, would this device be operable?

A. It would not.

Q. 38. If the plaintiffs' lever was substituted for defendant's lever in the defendant's device, would the defendant's device be operable?

A. It would not.

Q. 38a. If the plaintiffs' keeper were substituted for the defendant's keeper, in the defendant's device, would the defendant's device be operable?

A. It would not.

Q. 39. Will you please, now, finally, briefly consider claims 1, 2, 4 and 7 of the plaintiffs' patent, and

specify the mechanical elements therein which are lacking in the defendant's structure?

A. In claim 1 of plaintiffs' patent, there is specified, at the end of that claim, another arm projecting from the handle portion, a distance from the pivot, and lying nearly at right angles to the first arm of the lever. There is no such arm in the defendant's structure. In the early part of the claim, in describing the keeper and the head thereof, are the words: "Said head depending below the post and formed with upper and lower curved outer sides coming substantially to a point." The upper curved side referred to in this claim, is, essentially, in the plaintiffs' device, but has no function in the defendant's device, and no such upper curved surface or side is found in the defendant's patent.

It might be well for me to state that in defendant's structure, being Plaintiffs' Exhibit "C," an upper curved edge does occur as a matter of ornamentation, but that curved portion has no function, and might just as well be straight, as shown in the defendant's patent drawing. But, there are those two distinct differences between these structures concerned.

In claim 2 of the plaintiff's patent, we also find a defined specification of the requirement: "An upper curved outer side," and also: "A second arm projecting from the handle portion at an angle to the first arm and adapted to ride against the upper outer side of the keeper." Neither the upper curved side of the keeper, nor the second arm projecting from the handle and adapted to ride against the upper outer side of the keeper, are present in the defendant's patent or the physical exhibit.

In claim 4 of the patent in suit, there is provided two arms on the latch lever, one of which is engaged with the outer portion of the keeper when the door is moved to a closing position, to swing the lever from

vertical position to a horizontal position and engage the other arm under the keeper, and the other of which is engaged with a different outer portion of the keeper when the door is moved to closing position. One of these two arms specified in the patent in suit is not present in the defendant's patent or exhibit nor is there any arm in the defendant's patent or exhibit which engages one outer portion of the keeper in conjunction with the engagement of another arm with another outer portion of the keeper, it being intended by the inventors that the outer portions of the keeper referred to are the outer portions shown in the drawing of the patent, and that the lever arms referred to engaged with these portions of the keeper as indicated in the drawings of the patent.

In claim 7 of the patent in suit, the inventors specify a lever with a second arm projecting from the handle portion of the lever within a short distance from its pivot. Said keeper being formed at its outer sides for engagement with the respective arms of the lever, for the purpose that they had in mind; and, there is no such second arm projecting from the handle portion of the defendant's lever which could be engaged with that portion of the keeper which is intended to be used for that purpose in the plaintiffs' patent in suit, as illustrated in the drawings, and as described in the specifications.

Q. 40. If you were given the plaintiffs' patent—that is, their drawings and specifications—and were requested to reproduce the same, would you make anything like the defendant's device—that is, following the instructions of the plaintiffs' patent?

MR. LIVERANCE: That is objected to as entirely irrelevant and immaterial.

THE WITNESS: I could not.

CROSS-EXAMINATION.

By MR. LIVERANCE:

XQ. 41. In the two exhibits, Plaintiffs' Exhibit "B", which is the plaintiffs' latch made in accordance with the patent in suit, and Plaintiffs' Exhibit "C", which is the latch—alleged infringing latch made by the defendant, each member which is attached to the door includes a base and upstanding post at the upper end of which is an overhanging arm over the base; is that not true?

A. That is true.

XQ. 42. And between the base and overhanging arm is a latch lever, pivotally connected, the latch lever in both cases including a handle portion and one arm in substantial alignment with the handle portion; that is true?

A. Yes.

XQ. 43. Projecting from each latch lever are in one case, what has been termed an arm in Plaintiffs' Exhibit "B", which has a cam under-side, and what has been termed in another case a diagonal cam member with a cam under-side. Is or is not that true?

A. Except for the use of the words "substituted with a cam." I refer to the arm projecting from the lever, prime "B", that is substantially correct.

XQ. 44. It has no rounded innerside?

A. It has three rounded corners, and which the patent in suit illustrates and describes as a cam surface.

XQ. 45. On page 2, one place where it occurred, beginning with line 10—if you will read that, and on page 1, beginning with line 10——

A. The patent does describe a cam surface on that arm.

XQ. 46. Now, the keeper attached to the door frame in both instances, includes a base with an outer

horizontal extending post, and a head in each exhibit having an inner side with which the arm of the latch lever is in substantial alignment with the handle that is engaged when the door is closed; isn't that correct?

A. Yes.

XQ. 47. And each of these keepers at the lower outer side of the head has a curved outer edge?

A. Yes.

XQ. 48. Against which, when the door is closed, with the lever in a horizontal position, the arm which is in substantial alignment with the handle rides, and it permits the handle to pass under the nose of the keeper; is that correct?

A. Yes.

XQ. 49. The difference in the keepers, as I understand your testimony, is that in the defendant's latch, Exhibit "C", a lug projects from the side of defendant's keeper, no lug present in the plaintiffs' keeper——

A. No, that is not the difference in the keepers. There is the difference which you speak of, but in addition to that, there is the difference of the top edges, or as it is expressed in the patent in suit, the sides of the keeper, which, in the patent in suit, are used for a definite purpose in co-action with the arm of the plaintiffs' lever, whereas the upper edge or side, so called, of the defendant's keeper has no such function; nor is there an arm to engage with it.

XQ. 50. In other words, that part of the defendant's keeper, above the lug, so far as function is concerned, is surplusage?

A. That part of defendant's keeper which is above the lug, in the defendant's keeper, physical exhibit, is entirely unnecessary, and is, therefore, merely ornamentation, and the same remarks apply in general to the drawing of the defendant's patent.

XQ. 51. I call your attention to a large sized latch, that is, I believe you will agree, identical with the latch the defendant's show on the door and casing of Exhibit "C", and I direct your attention to the file marking across the keeper, at this side (indicating), of the lug when the keeper is, as it would be on the door, and ask if the surplusage, which is for ornamentation purposes only assuming the latch would not turn from vertical to horizontal position in closing the door, assuming the lever to have been in a vertical position, quite as well with it removed as with it on?

A. Please explain what you mean by the term "Surplusage."

XQ. 52. Surplusage is that part outward from the file mark that would show up——

A. You mean that if the outward end of the keeper were sawed-off, then would the keeper and latch lever operate as they were intended to do?

XQ. 53. Yes, in turning from vertical to horizontal position when the lever is in a vertical position on the door.

A. Yes, even if the keeper was so mutilated, and the latch lever were in a vertical position, the projecting lug would still perform its function of turning the latch lever from a vertical to a horizontal position.

MR. LIVERANCE: The large exhibit referred to, is offered in evidence, as Plaintiffs' Exhibit "I."

By MR. LIVERANCE:

XQ. 54. This defendant's latch lever has an arm in alignment with the handle substantially, a projection, whether you call it an arm or diagonal member or what not, which extends at an angle from said lever or arm which is in substantial alignment with the latch handle when the lever is in the horizontal position, engaging against the curved under side of the keeper head, and the projecting member, arm or what-

ever you may call it, which engages with the outer side of the lug when the lever is in a vertical position when the door is closed, the lever will engage against the inner side of the head when the door is closed, irrespective of the vertical or horizontal position of the lever, is or is not that correct?

A. With all due respect to plaintiffs' counsel, I must say that I look upon that as an extremely involved question, as of a "catch" nature, inasmuch as I answered the previous questions in good faith and permitted the mutilation of the keeper for the purpose of answering the exact question put by counsel.

However, may I be permitted to say that if such a stunt or trick were performed upon the keeper of the defendant's patent, it would render it, for practical purpose, entirely inoperative.

XQ. 55. Why?

A. For the reason that what we may call the first arm of the lever, referred to in the plaintiffs' patent, and as used in the defendant's patent, one arm, in alignment with the handle, would then foul the inclined surface or edge, or so-called side as referred to in the plaintiffs' patent which it is intended to engage.

XQ. 56. Did you ever saw one off to find out whether that was true or not?

A. No, I have not; I didn't saw one off, but I can readily see the use of the latch of Plaintiffs' Exhibit "C", and if that outer end of the keeper was sawed off, then the defendant's latch lever would be prevented from operating as intended, inasmuch as the projecting arm would be in line with the handle when in a horizontal position would catch against the surface of the metal which would result from cutting off the portion of the keeper to which you refer.

In other words, it would be a clear mutilation of the device.

MR. LIVERANCE: Inasmuch as the defendant's expert is, as in practically every patent case, an auxiliary counsel for the defendant, and as plaintiffs do not consider an expert necessary in a simple structure like this, it will be necessary for plaintiffs' counsel to reply to the expert arguments on record.

In the Wisconsin suit, an exhibit was filed with the material sawed off from one of the defendant's keepers, so as to bring the outer side of the arm in alignment with the upper, outer side of the keeper; and, it is the position of the plaintiff, that the addition of surplusage to the keeper and then the attempt to re-construct the claims wherein the word "outer" appears to the outer edge of this surplusage and functionally useless material, while at the same time the lug which is on the keeper takes the plane of and is equivalent to what is defined in the claim, is a quibble upon the word "outer"; and, the questions were directed to bringing out this identity of function, mode of operation and identity of structure, as claimed in the claims of the patent in suit.

Witness admitted that in both devices Plaintiffs' Exhibit "C" and Plaintiffs' Exhibit "B" the latch lever are parallel to the plane of the front face of the door and each is susceptible of being turned to an upper or vertical position at which it will stay by reason of the first arm of the lever (the one in alignment with the handle) coming against the lower side of the post of the base upon which the lever is mounted; and is further susceptible of being held in a horizontal position by the lever engaging against the upper side of said post on the base.

XQ. 60. If the lever, in either case, is in that horizontal position, and the door is closed, the lever stand-

ing upwardly until the arm in Plaintiffs' Exhibit "B" closes against the keeper, and is then turned back, so that the first arm in alignment with the handle will engage against the inner side of the keeper, while in the defendant's latch, if in a horizontal position, the same operations will occur, the arm in alignment with the handle riding against the curved side of the keeper head until the member projecting at an angle from the handle strikes the lug throwing the lever back to engage against the inner side of the keeper; is not that correct?

A. That is correct, and in fact you have simply the action of several other and old devices.

XQ. 61. We will talk about the other and old devices later, but at present, that is the action when the levers in these two exhibits are at horizontal?

A. Yes.

XQ. 62. When they are vertical, both levers are turned around to keeper engaging position by the projecting portion on the lever striking against a part of the keeper; isn't that correct?

A. That is correct.

XQ. 63. And in each case, when the door is closed, when the operator opens the door and turns the lever upward, toward vertical position, the projecting arm extending at an angle from the lever, rides against a portion of the keeper, and forces the door open if it is tightly closed, is that correct?

A. That is correct.

XQ. 64. There is identity in the function of the two latches, is there not?

A. There is, and there is not. There are a lot of devices, old devices of the same character.

XQ. 65. There is identity in the principle of operation, is there not?

A. Absolutely no.

XQ. 66. Explain where there is not identity in the principle of operation.

A. Principle of operation, to my mind, means the use—means the way in which the actions are brought about. That is the difference between our patent and another from time immemorial, or from the time of the original patent, whenever that was; and, in this case, as I have already explained, the difference between the action of these two latches lies in the improvement introduced by the defendant's invention over latches of the prior art in accomplishing the objects of the latch with less strain, less liability of damage, the possibility of using lighter parts, and cheaper parts because of their lightness, and in fact because the inventor of the defendant's patent recognized the value of the closed-coupling of the cam to the pivotal part of the latch. Or, in other words, the use of a cam as opposed to the use of a lever whereby the cam may be placed quite close—in fact as close as it is mechanically possible to get anything to the very pivotal part of the latch. And, for this purpose he required to use a specially provided lug projecting from the sidewall of the keeper for the purpose of engaging with that cam of the lever.

XQ. 67. This member on defendant's latch which you call the cam, and which I call the arm, but which is fastened adjacent to the pivot and projects laterally from the latch lever, when it engages the lug there is a turning movement imparted to the latch lever; therefore, necessarily, there must be a lever arm for that turning movement. As an engineer, that is so, is it not?

A. You mean that the cam that I am referring to has the effect of a lever?

XQ. 68. Yes, it has that lever, so that the force applied to that member is applied at a distance from the pivot, and that distance from where the force is ap-

plied to the pivot, is a lever arm for the turning moment of that force?

A. Yes; but I distinctly differentiated in the fact that the cam arrangement permits the advantage to which I have referred and eliminated the disadvantages of a lever co-operating with a portion of the keeper which is far distant from the pivotal portion of the latch lever at the time when the latch is in the process of operation to close the door.

XQ. 69. Both levers have a lever-arm to which the force is applied to turn the levers, do they not?

A. Not by a lever arm, but by means of a device cam which, in a sense, may be referred to as a lever; however, mechanically, a cam is not a lever.

Witness stated that he had read over the Keil patent of which Defendant's Exhibit 3 is a physical exhibit. He remembered reading the operation of the structure in that patent but does not remember it all. The operation of the Keil patent so witness said is well described beginning with line 73, page 1 of said patent.

XQ. 73. That description says that when the door is closed, 5 rides down the incline line of the keeper as indicated in 4 and automatically lifts the handle. Is there any intimation that the lever of the Keil patent is ever to stand horizontally and referring to Exhibit 3, will that lever stand horizontally by itself?

A. I cannot say without reading the Keil patent word for word that there is any statement therein that the lever will or will not stand horizontally at any time in the course of its use; but it appears to me, both from the drawings of the Keil patent and the operation as described in the lines of the specification to which you lately referred, and from the physical exhibit of the Keil patent latch, that this device will operate as intended by its inventor, at any position that the lever of the latch may happen to be in at the time

that the door is slammed shut. Not only that the device would operate with the lever in a horizontal position as well as in a vertical position, but also that that device is so universal in its provisions that notwithstanding the fact that the lever of the Keil can be placed in any position through 180 degrees, that the lever will be fully automatic in its action and will always successfully close and hold the door tight, which is exactly the object of all these old and new refrigerator latches.

XQ. 74. In a normal operation of the Keil latch, as shown on Exhibit "C," does it stand horizontal, or is it vertical?

A. It might be in either one of the two positions throughout that range of 180 degrees.

XQ. 75. What would hold it there?

A. In the upper, vertical position, gravity, plus possible stiffness of the pivotal relation——

XQ. 76. Of what?

A. In the horizontal position, stiffness in the pivotal relation which might be produced in a number of ways in the use of the latch.

XQ. 77. The patent in question doesn't say anything about that, does it?

A. As I said before, I haven't read the Keil patent word for word, with the object of looking for that feature, and not having done so, I cannot say.

XQ. 78. Suppose the pivot was found tight, how long would it remain tight in the normal operation of a refrigerator?

A. In certain circumstances it might remain tight very long; in others, it might even become tight.

XQ. 79. That is your opinion, that it would remain tight, or might become tight?

A. It is my opinion, developed out of my experience with mechanical devices in general and their use.

XQ. 80. In the Charles patent, what would hold the lever in a horizontal position?

A. The same things as I referred to might hold the Keil lever in a horizontal position.

XQ. 81. If you had a tight pivot in the Charles patent, it would be practically inoperative, would it not?

A. I have no reason to believe that that would be the case.

XQ. 82. You said, this morning, in your direct testimony, that the lever in the Ambrum patent, the keeper on the door could be interchanged in the matter you described. Did you ever try to do that?

A. No, but it is easily seen that it could be done.

XQ. 83. Can you design a practical latch that would do it?

A. Yes.

XQ. 84. I would like to have you do that.

A. When?

XQ. 85. Now.

A. Yes. The designing in words, without the use of a drawing board, I would take a latch equipped with this pivot and base plate and place it upon the door in the position now occupied by the keeper. I would take the keeper from the door and by placing the inclined planes of the keeper forwardly instead of as they are, backward, merely to reverse their positions, I would have provided a lock or latch where the keeper was on the door casing or jamb and the lever upon the door.

XQ. 86. Do you think that lever would work?

A. Yes.

XQ. 87. As a matter of fact, the arms of the lever would not engage this inclined portion until the door was actually shut, would they?

A. They certainly would. They would be made to do so.

XQ. 88. Then, they would stand in the way of the lever swinging over——

A. (Interrupting.) Not necessarily at all. They could be designed the way you are trying to indicate, but that would not be a wise thing to do.

XQ. 89. From your description, that is what you did——

A. (Interrupting.) No, certainly not. I mentally designed, described a Charles lock reversed, as to the position of the two functional parts, which would work.

XQ. 90. Are you familiar with the Condit latch?

A. Somewhat.

XQ. 91. The Condit latch has a lever mounted on the door frame or wedge cam with which it engages on the door. Did you ever see any practical latch in these were reversed by any refrigerator manufacturer?

MR. FAIRBANKS: I think Mr. Liverance has a sample of the Condit latch, and perhaps he might be willing to show it to Mr. Gibson, or we will have it marked for identification, so that all hands can be sure what we are talking about.

MR. LIVERANCE: The exhibit to which Mr. Fairbanks refers is produced, and it is offered in evidence as Plaintiffs' Exhibit "J."

THE WITNESS: The Condit latch which you have furnished me with could not be reversed in the sense we are now discussing; but, I would like to say, the Condit patent, inasmuch as I believe variations of the Condit latch have been made under that patent, in which there is a hook on the keeper for engagement with the lever, and such a latch as that could be reversed satisfactorily.

XQ. 92. You said that the Charles patent could be interchanged, and made into a practical refrigerator latch?

A. It could.

XQ. 93. But, the Condit could not?

A. I didn't say the Condit could not. The Condit as I understand it, is not only of a form exactly as the physical Exhibit of Condit which you have presented to me but that there is a Condit latch with a hook which would make it satisfactory for the purpose of reversal of the functional parts of the latch.

XQ. 94. Assuming that there was a hook, could you make an automatic Condit latch that would engage with the keeper, or an automatic Charles latch that would engage with the keeper when the door was closed, with the latch lever mounted on the door, and did anyone ever do it prior to Winters & Crampton?

A. I could; but in regard to the use of the Condit principle, in full automatic form, I would have to do what Mr. Condit did back in 1901. Without going as far as Mr. Condit did, I would probably do what Mr. Schraeder did in 1914, in his patent, Defendant's Exhibit No. 5.

XQ. 95. If you did what Mr. Schraeder did in 1914, you would leave the latch lever on the door frame, would you not?

A. If I had the knowledge of the art that Mr. Schraeder did in 1914, I could have used the prior art in that day, and could have made a latch of the general Condit original form, full automatic, and I could have made it to operate with a latch lever, either on the door post or upon a door.

XQ. 96. The operation of the Dent structure as described in the paragraph on page 1 of the Dent Patent No. 670,506, Defendant's Exhibit No. 2, beginning with line 72, is it not, that portion reading:

> "When the door is pushed shut, the lever 'f' is depressed to force the lug 'g' into the seat 'g' of the wing 'h.' When now the lever 'f' is still further depressed, the cam 'F' of the lever 'f' is forced inward by the weight 'h' of the keeper and

by reason of the slotted connection with the pin or bolt 'e' is permitted to bear directly upon the plate 'd' of the door 'e.' The door will thus be tightly jammed into its seat without strain upon the pivot 'e' of the latch. When the door 'e' is to be opened, the latch 'f' is thrown upward until the lug 'g' strikes upon the wing 'h-2' when the door will be initially pried or forced open."

Is there anything in this operation, or is there anything in the whole description of the patent, which is only a column and three-quarters long, which says that this lever is ever to remain horizontal, in the dotted line position as shown in Figure 2?

A. It is evident in this patent, that the inventor, Mr. Dent, had in mind to have his lever so loose that it would be capable of closing the door reasonably tightly by the action of the weight of the handle, although the patent appears to contain a misprint or misstatement where it refers to the weight "ll" of the keeper; and in such case it is not likely that that inventor intended this device to operate from the horizontal position of the handle. However, it does actually operate from the horizontal position, inasmuch as the inventor shows the handle in a horizontal position, where it co-operates with a part of the keeper shown in the drawings, and if the handle ever should be stuck in a horizontal position, it certainly would operate.

XQ. 97. In your treatment of the claims of the patent in suit, you referred, several times, when discussing certain language of the claims, to the drawings in order to get the meaning of the words used in the claims. In accordance with the same treatment, referring to the drawing and disclosure of the Winters & Crampton patent, and the disclosure of the Condit or the Keil or the Charles patents, in considering claim 7 in each of those three patents, Condit, Keil or Charles,

is there any latch lever, pivotally mounted on the door between its ends, in the same sense, for the same purpose as Winters & Crampton?

A. Concerning the drawings of the Winters & Crampton in relation to claim 7, also the disclosures of the Condit and Keil, the devices are not the same in the sense that the levers of Condit and Keil project outwardly from the face of the door, whereas in Winters & Crampton's the lever operates in the same plane as the door.

However, in the Charles patent, the lever there operates in the same plane of the door, and if reversed in the relation of keeper and latch to door and post, the lever would then operate in the same manner as the Winters & Crampton, and furthermore, in considering these matters, I had in mind the Ward patent, in which the lever operates in the same plane as the door; and, the Schraeder patent, Defendant's Exhibit No. 5, operates in the same plane as the door, even though the latter be shown with the lever attached to the casing which I have reversed onto a door.

XQ. 98. In both the Charles and Schraeder patents, to which you have referred, particularly in the Schraeder patent, what would happen if the lever was turned in a horizontal position, and the door was opened and you tried to close the door?

A. In both these patents, with the lever attached to the door post as shown, and if the levers in each case were in an inwardly, horizontal position, and the door were closed upon them, it would be possible to bend or otherwise damage the lever.

XQ. 99. Then, if I understand your answer correctly to the previous question or two, neither Keil nor Kent has a latch lever pivotally mounted on the door between its ends with one end of the lever to operate

the handle and the other end of the lever, a keeper engaging arm?

A. Both of these are substantially what you describe.

XQ. 100. In the Dent patent, No. 670,506, there is a lever which has one thing formed into a handle, "f"; where the other end appears with a lever pivoted between that and—that is a keeper engaging arm.

A. This, in a general sense, the projection from the lever near the pivotal point is another end of the lever.

XQ. 101. Is it the end of the lever at the opposite side of the pivot, whereas the claim called for one end of the lever being formed into an operating handle and the other into a keeper engaging arm?

A. No, that is not such, any more than is the lever of the Raath's patent.

XQ. 102. In Keil, the same is true, is it not, Keil patent No. 554,558?

A. The same applies.

XQ. 103. And, in the Charles patent the lever is not on the door, but is on the door jamb?

A. Correct, as shown.

XQ. 104. Now, where in the Dent Patent No. 670,506 occurs this element of claim 7, a second arm projecting from the handle portion of the lever, a short distance from its pivot?

A. There is no such arm.

XQ. 105. And, in the Keil patent there are two pins, 4 and 5 projecting laterally from the lever, the axis of which are in substantial alignment with the axis of the pivot?

A. Yes.

XQ. 106. And in the Charles, if we considered the two parts, small "d" and "e" as two arms and "g" as the keeper, which it is, where does anything on the keeper "g" engage with any of these arms?

A. I do not consider the keeper is represented by the letter "g" since the keeper of Charles comprises several functioning parts other than the parts marked "g" in a similar manner to other keepers of other patents which have several functioning parts, and as a matter of fact the parts "i" and "h" of the Charles keeper do connect with the arms "d" and "e."

XQ. 107. Have the parts "d" and "h" any function whatever in holding the lever in close keeper engaging portion, or are they not merely an operation means which incidentally happens to be made integral with the part on which the keeper "g" is?

A. These parts "d" and "h" are made integral of the whole keeper of the Charles patent, in the same way as the curved upper and lower sides of the keeper of Winters & Crampton in suit, are integral with the actual hook of the keeper.

XQ. 108. In the Charles patent you could make the plate which carries the parts "d" and "h" separate and not integral with the part which carries the keeper "g," could you not, and it would function?

A. As a matter of fact, such a mechanical freak could be produced, and in fact the same freak construction could be applied to any keeper, all of these, old and new art.

XQ. 109. How would you make the keeper of the Winters & Crampton structure, or the parts which operate the lever engaged with the arms, separate and not integral and get the same functions in as practical and simple a manner?

A. If I were to start out to produce such a freakish construction, I would divide the keeper into two portions, one of which was a hook that had no other purpose but to hold the door in its closed position, and the other of which projected over the hook portion, not necessarily actually touching the hook portion, but this second part would embody the two incline planes which

are necessary for the functioning of the lever of the Winters & Crampton patent.

XQ. 110. Which of these three patents, Kent, Keil or Schraeder, or any of the others you have referred to, do you consider as showing and anticipating the combination which Winters & Crampton have devised which is shown and described in their patent, serving the same purpose, working on the same principle and conforming to the language of the claims therein; where do you find that combination?

A. I find the general form and purpose of the Winters & Crampton patent to be old, and disclosed in Keil and Dent, Maltbie, of 1885; Baldwin, of 1889; Fritz, 1899; Ward, 1917, and Schraeder, 1918.

However, this keeper of Winters & Crampton's appears to me to have a novel feature, which is the use of the upper inclined edge, or as they call it, "side of the keeper," for operating the second arm of their lever.

I find that the lever, with its special arrangements or arm for use in co-operation with the special upper curved edge of the keeper, seems to me to be a new combination of the relation of those part, although the general structure of both the keeper and the lever appears clearly in the prior art, especially in regard to the general structure of the lever with its two arms, as found in Charles.

I do not find this principle—this broad and novel combination of co-operative portions of lever and keeper in any of the patents or physical exhibits that I have examined and that combination seems to be new.

XQ. 111. In your description of various references which you have considered, you have not attempted to interpret the claims, but have read the claims literally, the early prior claims, particularly claims 5 and 6, have you not, without reference to the principle of the patent in suit?

A. I have tried to relate the disclosures of the earlier patents to the wording of those claims, looking upon the wording as a description of the mechanical object.

RE-DIRECT EXAMINATION.

Witness said that the normal position of the handle of the latch lever in plaintiffs' and defendant's device as shown by Plaintiffs' Exhibits B and C was horizontal.

RDQ. 114. Mr. Liverance asked you if, when both the levers were horizontal, which is their ordinary, normal position, it is not a fact that the terminal of each lever rubbed down the lower curved cam surface of each keeper, and you answered: "Yes." Now, is there anything new or novel, or was there, at the date of the plaintiffs' patent in suit in that construction or function?

A. There was not.

RDQ. 115. The expression "principle of operation" has been frequently used by Mr. Crampton as well as by his counsel, during your cross-examination. Is the principle of operation, broadly speaking the automatic tripping of the latch, new in the plaintiffs' device, in view of the prior art?

A. It is not. That principle has been the object of most of the inventors whose patents have been under discussion in this case.

RDQ. 116. So far as any principle of operation is involved in the plaintiffs' latch, is it merely insuring the tripping of the latch, no matter whether it is horizontal or vertical, is that substantially correct?

A. That is it.

MR. FAIRBANKS: Defendant's counsel offers in evidence a plate marked Defendant's Exhibit No. 21, and the same is shown to Mr. Gibson.

By Mr. Fairbanks:

RDQ. 117. Mr. Gibson, will you very briefly say what is portrayed on this plate, Defendant's Exhibit No. 21, and state whether or not the defendant's latch involves anything more than a rearrangement of parts shown in the Keil and Charles patents?

Mr. Liverance: Objected to as immaterial, irrelevant and entirely improper; as being apparently an argumentative position of the defendant, and one which should be presented by argument rather than by testimony.

A. (Continuing.) Each of the four latches shown on this plate, Exhibit No. 21, are devices which are intended to accomplish exactly the same object, each one of them. They do it, however, in a different mechanical way, somewhat different in the relation of the functioning parts of those levers, and each of them evidently devised for the purpose of introducing an improvement in the art of latches, or the differences between them introducing advantages of operation. For instance, the Keil latch has projections from the side of its body for the purpose of making the latch handle move into the required position for locking the door, also for the purpose of forcing the door open in case it should be closed, etc.

The Charles patent has exactly the same objects, only that it shows two arms projecting in the same plane as the lever handle. These arms do the same things as far as the locking of the door and unlocking of it is concerned, as the projection of the Keil handle.

In the Winters & Crampton lever there again there are two arms, generally in the same plane as the lever, projecting from the lever in much the same way as the two arms of Charles patent project, and for the same purpose.

In the Schraeder patent there is a projection in line with the lever handle and a cam placed very close to the pivot, which, again, is intended to bring about the automatic operations relating to the opening and closing of the ice-box door. All of these accomplish the same object. Some of them accomplish it in more mechanical ways than others, more economical ways, or in ways which will give better results in the general use of the devices.

MR. LIVERANCE: Renewed objection is made to the answer as being argumentative, as stating the position which the defendant will argue before the Court, and further that the plate, Defendant's Exhibit No. 21, shows only a part of each structure, and not the whole combination; and, in that respect is not complete.

On re-cross-examination witness reiterated that the normal position of the latch lever was horizontal, more likely to be horizontal than vertical, though it might sometimes be vertical. That he had operated refrigerators and found it more natural to leave the lever in horizontal position than in vertical.

STIPULATION IN RE NARRATIVE STATEMENT OF TESTIMONY.

(Filed October 17, 1927.)

It is hereby stipulated and agreed by and between counsel for the parties in the above-entitled cause the Court approving, that the statement of evidence herewith submitted is a true condensed statement of the evidence taken in this cause, and has been prepared by counsel for the plaintiffs and submitted to and corrected by counsel for the defendant.

(Sgd.) FRANK E. LIVERANCE, JR.,
Counsel for Plaintiffs.

(Sgd.) E. HAYWARD FAIRBANKS,
Counsel for Defendant.

Stipulation and statement of testimony approved:

(Sgd.) O. B. DICKINSON,
District Judge.

Dated this 15th day of October, 1927.

OPINION, DICKINSON, J., SUR TRIAL HEARING ON PLEADINGS AND PROOFS.

(Filed August 11, 1927.)

This cause concerns Letters Patent No. 1,385,102, for an improved refrigerator door latch lever.

The conclusion reached is that the claims of the Patent (other than 5 and 6) should be so read as to restrict the right granted to the plaintiff's special construction, which the defendant does not infringe, and that Claims 5 and 6 are invalid.

DISCUSSION.

The patent was held to be valid and infringed by decree of the United States District Court for the Eastern District of Wisconsin. The parties were really the same as those before us but the defendant here was not made formally a party to that proceeding. In consequence, the ruling is not asked to be deemed conclusive. An Appeal from that ruling is pending. Were the question ruled in that case, the question here raised we would unhesitatingly follow it because we are in full accord with the views expressed by Judge Geiger upon the feature of the patent which he discussed. We have, however, a wholly different question here raised. The inventive feature and practical value of the plaintiff's latch is that when the door is "slammed to" it will be automatically locked whether the latch lever proper is in the position of pointing toward the door side or jamb side of the refrigerator. This result is accomplished by having two cams respectively so placed as that one operates in one case and the other in the other. There is, as Judge Geiger has expressed it, not "the slightest doubt about the perfect identity of plaintiff's and defendant's devices in a legal sense". This is because of the use of what may be called alternate or double cams in the construction of each device. If, however, this feature had already been appropriated by the prior art, then the only advance made by plaintiff's invention was in the special construction or position of his cam and there would be no infringement unless this special cam feature was copied. This the defendant has not done. Upon the question of how much of the plaintiff's latch was an appropriation of the possessions of the prior art, Judge Geiger expresses no opinion. This question is now the only one. Cams to direct the latch to a locking position are "as old as the hills" as they followed closely upon the latch string. A real advance was made by the shifting of the latch

lever from the jamb to the door. This feature differentiates many of the devices of the older art from those of the present. Another advance was made in what we have called the alternate, or what is perhaps more accurately termed, the double cam feature. These two features in combination permit the door to be closed and locked by a slamming action whether the latch lever be in a vertical or horizontal position. If this combination did not originate with the plaintiff's patentee, the plaintiff and defendant each have the like right to a mere special construction.

This takes us to the Claims of the Patent and back to the prior art. Claims 5 and 6 are subject of special discussion and will be here ignored. The scheme of the improvement outlined in the patent application is that of an advance upon the plan of the Condit latch. The main features are (1) a transference of the latch lever to the door, and (2) to assure the operation of the device whether the latch lever be in a vertical or horizontal position when the door is slammed. The described structure is of a device which meets both these objectives as does likewise the patented device of the defendant. Patentability and infringement are thus both present unless these features be old. Defendant confidently asserts them to be features of "the oldest constructions in this art" and specifically as present in the Keil, Dent and Charles Patents.

It may be here interpolated that Claims 5 and 6 of the patent in suit are for a detached latch and keeper construction. There is a practical admission of the absence of novelty in these constructions aside from the applied features above mentioned, and Claims 5 and 6 have been (at least attempted) to be withdrawn from the case. Whether they can be thus eliminated is in controversy. We mention this now so that it may be clear that we are assuming the keeper and latch (con-

sidered as detached and independently) to belong to the prior art.

We wish also to reiterate that the question is not one of the validity of plaintiffs' patent but the scope of the claims. There is in effect no denial of the right to the specific construction described. Defendant could not well take any other position because it also does business under the assumed protection of a like patent to its special construction. The distinction made has a controlling bearing upon the question of equivalents and consequently upon infringement. The action of the Patent Office in rejecting Claim 7 (as made in the original application) on the Ward and Keil patents and making no reference to prior art bearing upon the other claims, as well as the subsequent allowance of the Schraeder patent, make it manifest that the claims of the patent in suit were read and allowed as for a specific construction. The plaintiffs' application was filed December 7th, 1920. Had the Condit device been a full expression of the accomplishments of the prior art at that time, as the application undoubtedly assumes and as would seem to have been assumed throughout, there could be no doubt that the Claims of the patent (other than 5 and 6) should be read so broadly as to give the patentee the full benefit of the doctrine of equivalents. Keil, however, as early as 1895 (Letters Patent No. 564,448); Dent in 1900 (Letters Patent No. 670,506); Charles in 1901 (Letters Patent No. 702,185); Schraeder in 1914 (Letters Patent No. 1,117,709) and again in 1915 (Letters Patent No. 1,170,685); Ward in 1917 (Letters Patent No. 1,250,736), and Schrader still again in 1917 (Letters Patent No. 1,265,120) all describe devices which, if after the patent in suit and if the claims of the latter are broadly read, would be infringements. There is in consequence no novelty in the features in respect to which the patent in suit is asserted to be an advance upon the Condit device, to wit,

placing the keeper upon the door jamb and the lever upon the door and providing for the closing of the door without regard to the position of the lever. We make this latter statement with confidence because in the argument addressed to us this closing of the door with indifference to the position of the latch lever was asserted to be prevented in the devices of the old art solely by the fact that the lever latch was placed on the jamb. This leaves to the plaintiffs no exclusive right except to the particular construction of their device. There can be no denial of the fact that this device has many merits. It is simple, of neat appearance, durable and effective and in all these respects an improvement upon the latches before in use. Although the plaintiffs have exposed themselves to the charge of overstating the favorable reception given to this latch by the trade, we can well believe that it found a ready sale. There is likewise room for at least the suspicion that the defendant sought to "cut in" on the plaintiffs' trade by making a latch, in the druggist phrase, "just as good", and that the differences in the two devices are only such as to make a difference in special construction. That there is such difference is evidenced by the findings of the Patent Office in granting a patent to each. We are here concerned only with plaintiffs' claim of right to a monopoly, and we hold that they have none except to a latch of their own special construction, and this right our finding is the defendant does not infringe. With respect to Claims 5 and 6 a word must be added. It is a wise and general practice in patent cases to select the claims which, as the phrase goes are "in issue". All the Claims of this patent were thus put in issue and the defendant was at some pains and expense to answer to Claims 5 and 6. It was not until the argument that the plaintiff sought to withdraw these claims. We will not stop to discuss any of the questions raised

but content ourselves with the finding that Claims 5 and 6 are of no validity.

An appropriate decree in accordance with this opinion may be submitted.

DECREE.

(Filed August 12, 1927.)

Before DICKINSON, *J.*

This cause having come on to be heard upon pleadings and proofs and Frank E. Liverance, Jr., Esq., having been heard on the part of plaintiffs, and E. Hayward Fairbanks, Esq., having been heard on the part of the defendant, both having submitted briefs and due deliberation having been had, it is

ORDERED, ADJUDGED and DECREED, that the bill of complaint herein be and the same is hereby dismissed with costs to defendant to be taxed by the clerk.

By THE COURT,

DICKINSON, *J.*
U. S. D. J.

Approved as to form.

CYRUS N. ANDERSON,
Solicitor for Plaintiffs.

PETITION FOR APPEAL.

(Filed October 10, 1927.)

The above-named plaintiffs, Alexander F. Winters and Basil R. Crampton, conceiving themselves aggrieved by the decree made and entered in the above-entitled cause on the twelfth day of August, 1927, dismissing their bill of complaint, hereby appeal from said decree to the United States Circuit Court of Appeals for the Third Circuit for the reasons set forth in the assignments of errors filed herewith; and pray that their appeal may be allowed and that citation be issued as provided by law, and that a transcript of the records, proceedings and papers upon which said decree was based, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Third Circuit sitting in Philadelphia, Pennsylvania.

Your petitioners further pray that the proper order touching the security to be required of them to perfect their appeal be made.

(Sgd.) CYRUS N. ANDERSON,
Solicitor for Plaintiffs.

(Sgd.) FRANK E. LIVERANCE, JR.,
Counsel for Plaintiffs.

ORDER ALLOWING APPEAL.

(Filed October 10, 1927.)

Before DICKINSON, *J.*

Appeal allowed upon filing security for costs as required by law in the sum of two hundred and fifty ($250) dollars.

By THE COURT,

Attest:
E. G. JOHNSON,
Deputy Clerk.

October 10, 1927.

ASSIGNMENTS OF ERROR ON APPEAL.

(Filed October 10, 1927.)

Now comes the plaintiffs, Alexander F. Winters and Basil R. Crampton, by their counsel and saying that in the decree entered August 12, 1927, in the above cause the Court erred in the following particulars:

1. In ordering that the bill of complaint be dismissed.

2. In awarding costs to the defendant.

3. In finding claims 5 and 6 of Patent No. 1,385,-102, invalid and not infringed by the defendant.

4. In finding claims 1, 2, 3, 4, and 7 of said patent No. 1,385,102, not infringed by the defendant, and in not finding said claims 1, 2, 3, 4 and 7 of said patent infringed by the defendant.

CYRUS N. ANDERSON,
Solicitor for Plaintiffs.

FRANK E. LIVERANCE, JR.,
Counsel for Plaintiffs

PRÆCIPE FOR RECORD ON APPEAL.

(Filed October 10, 1927.)

To the Clerk of the Court:

Will you please prepare a transcript of the record in the above-entitled cause for the Circuit Court of Appeals for the Third Circuit, and include therein the testimony as required by the rule, the same having been prepared by counsel for plaintiffs and settled here by stipulation and approved by the Court. Please include the following documents which are to be printed:

Docket Entries.

The Bill of Complaint.

The Answer.

Opinion of Court.

Decree.

Petition for and allowance of Appeal.

Assignments of Errors.

Præcipe of Appeal Record.

Plaintiffs' Exhibit A, Winters & Crampton Patent 1,385,102, in suit.

Plaintiffs' Exhibit D, certified copy of the decree of Judge Geiger.

Plaintiffs' Exhibit E, Conroy Patent 332,495.

Plaintiffs' Exhibit H, compilation of latches of patent in suit sold 1921 to 1926.

Defendant's Exhibit 2, Dent Patent 670,506.

Defendant's Exhibit 4, Keil Patent 554,448.

Defendant's Exhibit 5, Schraeder Patent 1,114,296.

Defendant's Exhibit 6, Schraeder Patent 1,117,709.

Defendant's Exhibit 7, Schraeder Patent 1,170,685.

Defendant's Exhibit 8, Schraeder Patent 1,265,120.

Defendant's Exhibit 9, Schraeder Patent 1,575,647.

Defendant's Exhibit 11, Charles Patent 702,185.

Defendant's Exhibit 14, File wrapper history of the patent in suit.

Defendant's Exhibit 15, Ambrum *et al.* Patent 138,112.

Defendant's Exhibit 16, Simmons Patent 62,078.

Defendant's Exhibit 17, Weist Patent 934,253.

Defendant's Exhibit 18, Raaths Patent 1,022,872.

Defendant's Exhibit 19, Ward Patent 1,250,736.

Defendant's Exhibit 20, Colored plate.

Defendant's Exhibit 21, Colored plate.

Stipulation *in re:* Narrative Statement of Evidence.

Statement of Evidence.

Please forward to the clerk of the Circuit Court of Appeals for the Third Circuit the following exhibits which are not to be printed:

Plaintiffs' Exhibit B, latch structure of the patent in suit.

Plaintiffs' Exhibit C, defendant's latch structure.

Plaintiffs' Exhibit F, Winters & Crampton catalog.

Plaintiffs' Exhibit G, Conroy specimen latch.

Plaintiffs' Exhibit I, defendant's large size latch.

Plaintiffs' Exhibit J, Condit latch.

Defendant's Exhibit 1, specimen of latch of Dent patent.

Defendant's Exhibit 3, specimen of latch of Keil patent.

Defendant's Exhibit 10, specimen of latch of Charles patent.

Defendant's Exhibit 12, defendant's catalog, Volume C.

Defendant's Exhibit 13, defendant's catalog, Volume B.

(Sgd.) FRANK LIVERANCE, JR.,
Counsel for Plaintiffs.

Approved:
E. HAYWARD FAIRBANKS,
Counsel for Defendant.

CLERK'S CERTIFICATE.

DISTRICT COURT OF THE UNITED STATES OF AMERICA,
EASTERN DISTRICT OF PENNSYLVANIA.

I, GEORGE BRODBECK, Clerk of the District Court of United States for the Eastern District of Pennsylvania, do hereby certify that the annexed and foregoing is a true and faithful copy of so much of the pleas and proceedings; in the case of Alexander F. Winters and Basil R. Crampton v. Dent Hardware Company, No. 3999 March Term, 1927, as per præcipe filed, a copy of which is hereto attached, the transcript of record in the above-entitled cause is to include now remaining among the records of the said court in my office.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed the seal of said District Court at Philadelphia, this
(Seal) nineteenth day of October, in the year of our Lord one thousand nine hundred and twenty-seven and in the one hundred and fifty-second year of the Independence of the United States.

GEORGE BRODBECK,
Clerk.

PLAINTIFFS' EXHIBIT A.

U. S. Patent No. 1,385,102, to A. F. Winters and B. R. Crampton.

A. F. WINTERS AND B. R. CRAMPTON.

LATCH.

APPLICATION FILED DEC. 7, 1920.

1,385,102.

Patented July 19, 1921.

2 SHEETS—SHEET 1.

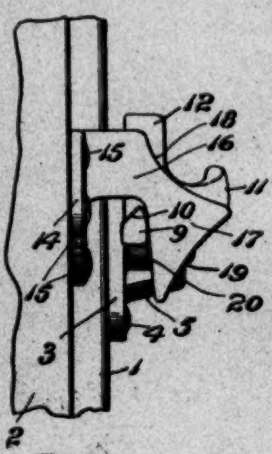


Fig. 2.

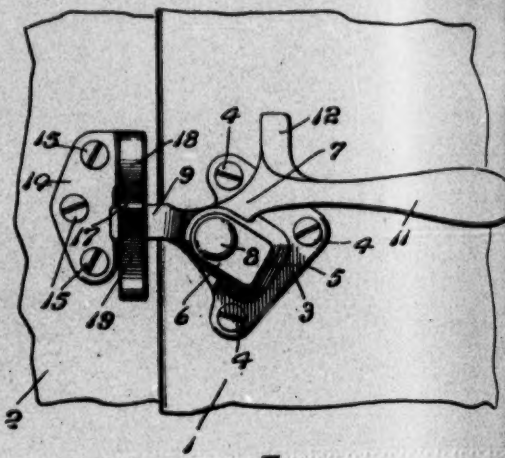


Fig. 1.

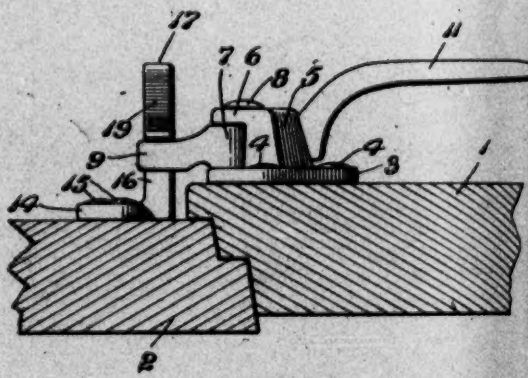


Fig. 3.

Inventors

Alexander F. Winters

Basil R. Crampton

By Frank E. Livermore

A. F. WINTERS AND B. R. CRAMPTON.

LATCH.

APPLICATION FILED DEC. 7, 1920.

1,385,102.

Patented July 19, 1921.

2 SHEETS—SHEET 2.

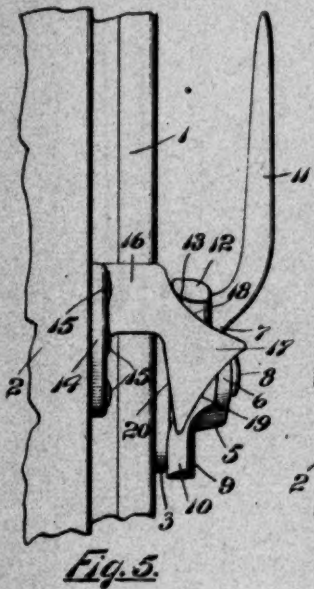


Fig. 5.

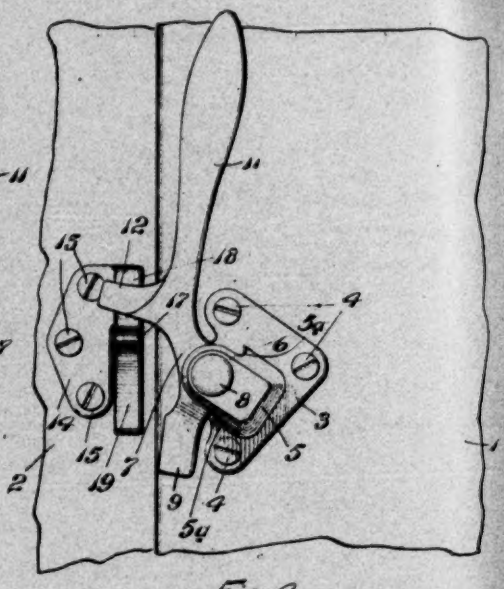


Fig. 4.

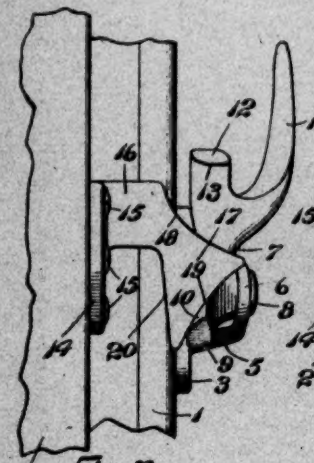


Fig. 7.

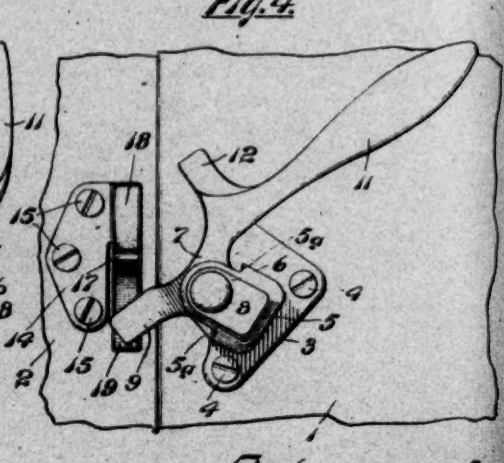


Fig. 6.

Inventors

Alexander F. Winters

Basil R. Crampton

By Frank E. Liverance Jr.

Atty

FOLD OUT IS TOO LARGE TO BE FILMED

UNITED STATES PATENT OFFI

ALEXANDER F. WINTERS AND BASIL R. CRAMPTON, OF GRAND RAPIDS,

LATCH.

1,385,102. Specification of Letters Patent. Patented July

Application filed December 7, 1920. Serial No. 428,891.

To all whom it may concern:

Be it known that we, ALEXANDER F. WINTERS and BASIL R. CRAMPTON, citizens of the United States of America, residing at Grand Rapids, in the county of Kent and State of Michigan, have invented certain new and useful Improvements in Latches; and we do hereby declare the following to be a full, clear, and exact description of the invention, such as will enable others skilled in the art to which it appertains to make and use the same.

This invention relates to a latch of the swinging lever type, particularly adapted for use on refrigerators though applicable in many other relations where a door is to be closed and held in closed position. The swinging lever latch, or as it is better known, the Condit latch, is pivotally connected at one end to the door jamb or casing, allowing the door to be opened when the latch is thrown to an upper vertical position, and coming down across the meeting edges of the casing and door when swung to horizontal position, engaging with a cam member on the door to wedge the door tightly shut. This latch is a very serviceable latch but is relatively hard to operate due to its attachment to the casing instead of the door, and the same is liable to drop to horizontal position in which case the door cannot be closed without first raising the lever to upper vertical position while, many times, the door is inadvertently swung toward closed position and against the lever in its horizontal position with injury either to the lever or door or both. In the present invention, it is a primary object and purpose to provide a latch which may be pivotally connected to the door and which is automatically operated to engage with a retaining member or keeper fixed on the door casing when the door is closed irrespective of the vertical or horizontal position of the latch lever, working as well in the one case as the other.

Fig. 2 is a side elevation there

Fig. 3 is an under plan view the door and adjacent portion o therefor being in section.

Fig. 4 is a view similar to Fig the door approaching closed po the swinging lever in vertical rel door.

Fig. 5 is a side elevation there

Fig. 6 is a front elevation sho tion on the swinging lever as t proaches closed position after sa been in horizontal position, and

Fig. 7 is a side view thereof.

Like reference characters re parts in the different figures o ings.

The door 1 and the adjacent the casing 2 against which the f edge of the door comes in closing fragmentarily, only enough bein disclose the attachment of the keeper thereto. The lever is car door. A base 3, attached to t screws 4 or equivalent connecting an integral outstanding post 5 f at the outer end an arm 6 extend paralleling the base. The lever between said arm and the base pin 8 passed through the same mounting the lever at a point ends. An arm 9 forming a part extends from the pivot and is cross the meeting edges of the do ing when the door is closed and horizontal position, this arm pas the keeper attached to the door c under side of the arm 9 is for angle as indicated at 10 the purpo will later appear.

In the opposite direction the le from the pivot and is formed in 11 set out a distance from the do the passage of the fingers of t between it and the door. A sh

head 17 which is extended downwardly for a distance below the lower edge of the post. The head on its outer sides is formed with two curved surfaces 18 and 19 which come to a point substantially at the front and between the upper and lower ends of said head, while on its inner side it is cut upwardly and inwardly at a slight angle to the vertical, forming a wedging cam 20, as shown.

The latch lever may be thrown to upper position, as shown in Fig. 4, being stopped from going beyond such position by engagement of the arm 9 with the lower shoulder 5ª made by post 5. It may also be carried to a horizontal position, being likewise stopped when it reaches such position by the upper shoulder 5ª. When the door is moved toward closing position with the lever vertically located, the cam side 13 of arm 12 strikes against the curved upper side 18 of head 17, causing the lever to be automatically swung toward the horizontal, and bringing the arm 9 into place so as to pass under the lower point of the keeper head so that it may engage at its outer side against the wedging cam side 20 of the head. It is apparent that by giving the end of handle 11 a downward movement, the door will be wedged tightly shut as the arm 9 moves upwardly and against the incline 20. To open the door it is merely necessary to grasp handle 11 and turn it to upper position, thus releasing the door, and the door may be opened at the same time by pulling outwardly on the handle after arm 9 has disconnected from the keeper.

If the lever has dropped to horizontal position while the door is open, the closure of the door and engagement of the lever with the keeper is accomplished by merely swinging the door shut, in which case, as shown in Figs. 6 and 7, the arm 9 strikes with its inclined cam side 10 against the lower curved side 19 of the head 17 of the keeper, causing the handle to be automatically turned toward vertical position. This movement continues until the arm 9 passes by the lower point of the keeper head 17 or, as usually occurs, the arm 12 comes into contact with the head at the upper side 18, whereupon the lever is actuated so as to bring the arm 9 under the depending portion of the keeper, the same as before described when closing the door with the lever in vertical position. In any case, the latch lever engages with the latch keeper when the door is closed irrespective of the position of the lever. This is a feature of merit in the invention and one of door is of value as use of one hand only is necessary for unlatching and drawing the door open. The ability to close the door and latch it automatically, irrespective of the position of the latch lever insures against injury to the latch or door and also insures that the door will be latched when it is swung shut. All of these features combined in the latch structure make it one of exceptional merit.

We claim:

1. In combination, a door and a casing therefor, a keeper attached to the casing comprising a base, an outstanding post and a head at the outer portion of the post, said head depending below the post and formed with upper and lower curved outer sides coming substantially to a point and with an inner upwardly and inwardly inclined side, a member attached to the door comprising a base, an integral outstanding post projecting from the base and a laterally extending arm at the upper end of the post paralleling the base, and a latch lever pivotally mounted between its ends between the said arm and base of said member, said lever having one arm formed with an under cam side extending from the pivot and adapted to be engaged under the depending portion of the keeper, a handle portion extending in the opposite direction from the pivot and another arm projecting from the handle portion a distance from the pivot and lying substantially at right angles to the first arm of the lever and likewise being formed with an inner cam side, substantially as and for the purposes described.

2. In combination, a door and a casing therefor, a keeper attached to the casing including an outer head spaced from the casing and formed with upper and lower curved outer sides coming substantially to a point and with an inner upwardly and inwardly inclined side, a member secured to the door, and a latch lever pivotally mounted between its ends on said member, said lever having one arm extended from the pivot adapted to ride against the lower outer side of the keeper head when the door is closed with the lever in horizontal position to automatically turn the lever to bring said arm back of the head, a handle portion extending in the opposite direction from said pivot and a second arm projecting from the handle portion at an angle to the first arm and adapted to ride against the upper outer side of the keeper when the door is closed with the lever positioned vertically to throw the

door and engageable with the keeper to hold the door in closed position, of means on the keeper and means on the latch lever to engage with the keeper on the outer sides thereof to swing the lever into engagement with the keeper at the inner side thereof when the door is closed with the lever occupying either a vertical or a horizontal position, substantially as described.

4. In combination with a door and casing therefor, of a keeper attached to the casing and a latch lever pivotally connected to the door and engageable with the keeper to hold the door in closed position, of two arms on the latch lever one of which is engaged with an outer portion of the keeper when the door is moved to closing position to swing the lever from a vertical position to a horizontal position and engage the other arm under the keeper, and the other of which is engaged with a different outer portion of the keeper when the door is moved to closing position and the lever is horizontal to turn the lever upwardly toward vertical position or until said other arm passes under and engages with the keeper to hold the door closed, substantially as described.

5. In a latch of the character described, a supporting member adapted to be attached to a door, and a latch lever pivotally mounted between its ends thereon, said lever including one arm extend
handle portion exten
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tending from the h
the pivot and in a di
right angles to the
as described.

6. A latch contain
bination defined, in
their inner sides be
surfaces, substantiall

7. In combination,
therefor, a keeper at
latch lever pivotally
between its ends, one
formed into an ope
other into a keeper
arm projecting from
the lever a short dist
at an angle to the first
formed at its outer
with the respective a
horizontal and vert
tively, as the door is
operate the lever so
der the keeper whe
closed, substantially

In testimony whe
tures.

ALEXAN
BASIL R.

FOLD OUT IS TOO LARGE TO BE FILMED

1
2
2

PLAINTIFFS' EXHIBIT D.
Certified Copy of the Decree of Judge Geiger.

INTERLOCUTORY DECREE.

The above cause coming on for hearing, on pleadings and proof of both parties and counsel for both parties having been heard, and after full consideration thereof, it is ordered, adjudged and decreed as follows:

1. That patent No. 1,385,102, issued July 19, 1921, for Latch, is a good and valid patent and defendant has infringed the same.

2. That an injunction shall issue out of and under the seal of this Court, restraining defendant, its officers, directors, confederates, agents and employees from manufacturing, selling or using, within the United States of America and its territories, any device which infringes said patent No. 1,385,102.

3. That the case be referred to Harry Kellogg, Esq., Master in Chancery of this Court, to take an account of defendant's gains and profits due to the infringement and plaintiffs' damages caused by the infringement, and report the same to the Court.

4. That plaintiffs recover their costs of suit to be taxed.

(Signed) F. A. GEIGER
District Judge.

Approved as to form:
JOHN W. MCMILLAN,
Counsel for Defendant.

Dated February 24th, 1927.

PLAINTIFFS' EXHIBIT E.

U. S. Patent No. 332,495, to P. J. Conroy.

(No Model.)

P. J. CONROY.

DOOR OR SHUTTER FASTENER.

No. 332,495. Patented Dec. 15, 1885

Fig. 1.

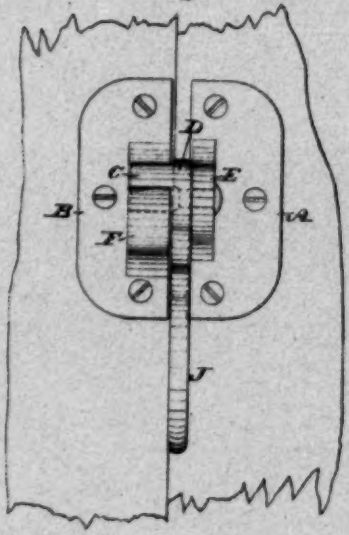


Fig. 2.

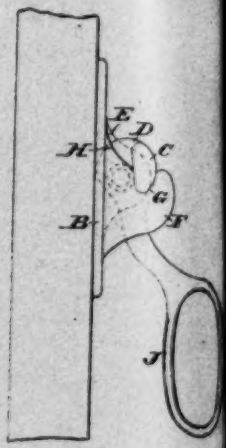
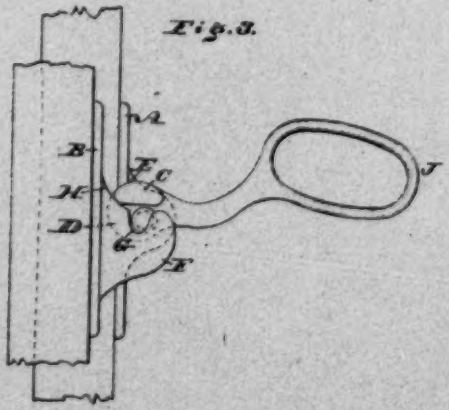


Fig. 3.



WITNESSES

Th. Tolle

H. F. Lindon

INVENTOR

P. J. Conroy

BY Johnson & Dickerson

ATTORNEYS

UNITED STATES PATENT O

PATRICK J. CONROY, OF PHILADELPHIA, PENNSYL

DOOR OR SHUTTER FASTENER.

SPECIFICATION forming part of Letters Patent No. 332,495, dated Dec

Application filed April 29, 1885. Serial No. 163,843. (No model.)

To all whom it may concern:

Be it known that I, PATRICK J. CONROY, a citizen of the United States, residing in the city and county of Philadelphia, State of Pennsylvania, have invented a new and useful Improvement in Door and Shutter Bolts or Fasteners, which improvement is fully set forth in the following specification and accompanying drawings, in which—

Figure 1 represents a front view of a door or shutter bolt embodying my invention. Figs. 2 and 3 represent side views thereof.

Similar letters of reference indicate corresponding parts in the several figures.

My invention consists of a door or shutter bolt, which may be tightly held in position and easily opened, as will be hereinafter fully set forth.

Referring to the drawings, A and B represent face-plates, which are attached, respectively, to a door and door-frame or to shutters, as required.

C represents a lug, which projects laterally from a head, D, and is somewhat oval in form, said head being eccentrically pivoted to a projection, E, on the face-plate A. From the face-plate B projects a catch, F, which has an opening, G, of the form of the lug C, and receives the same, and on the upper face of the catch F, back of the top of said opening, is an inclined or curved face, H, on which the lug C is adapted to ride, as will be hereinafter set forth. The head D has a handle, J, pendent therefrom, whereby it may be readily rotated.

The operation is as follows: In order to bolt the door or shutters, the handle J is moved outwardly and upwardly, whereby the lug C is raised, and is thereby
over the front end of the c
lowering the handle, the lu
ing G, and, owing to the ec
head D, said lug tightens a
said opening, thus firmly h
shutters in position. By r
the lug C, owing to the ec
head D, emerges from the
rection upward and rearwa
against the face H of the ca
ner of a fulcrum, thus partl
or shutters, and as the lug
est position (see Fig. 3) th
may be opened, said lug p
the catch and the parts bein
is evident. This feature o
lug on the face H is especia
doors, shutters, &c., that st

Having thus described my
claim as new, and desire to
Patent, is—

1. A lug projecting late
having an eccentric axis, and
formed with an opening to
combined and operating su
for the purpose set forth.

2. A lug projecting from
eccentric axis, in combinati
or catch formed with an o
said lug, and a face on whi
when removed from the oper
substantially as described.

PATRICK

Witnesses:
JOHN A. WIEDERSHE
A. P. GRANT.

P. J. CONROY.

DOOR OR SHUTTER FASTENER.

Patented Dec. 15, 1885.

Fig. 1.

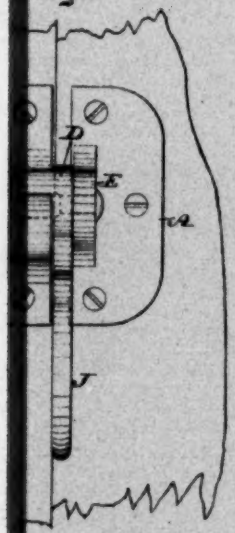


Fig. 2.

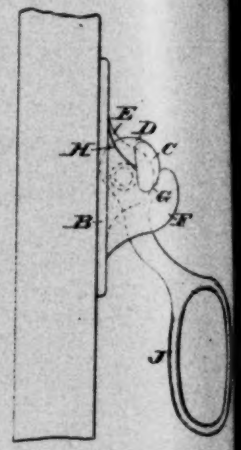
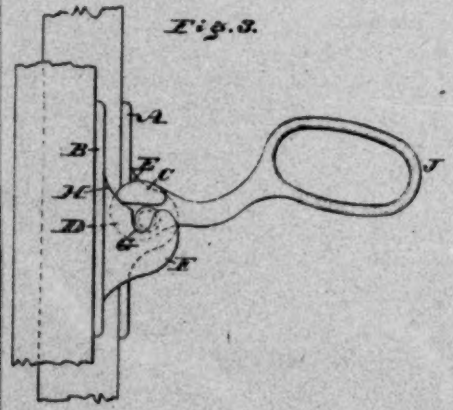


Fig. 3.



INVENTOR.

P. J. Conroy

BY

ATTY.

UNITED STATES PATENT OFFICE.

PATRICK J. CONROY, OF PHILADELPHIA, PENNSYLVANIA.

DOOR OR SHUTTER FASTENER.

SPECIFICATION forming part of Letters Patent No. 332,495, dated December 15, 1885.

Application filed April 29, 1885. Serial No. 163,843. (No model.)

To all whom it may concern:

Be it known that I, PATRICK J. CONROY, a citizen of the United States, residing in the city and county of Philadelphia, State of Pennsylvania, have invented a new and useful Improvement in Door and Shutter Bolts or Fasteners, which improvement is fully set forth in the following specification and accompanying drawings, in which—

Figure 1 represents a front view of a door or shutter bolt embodying my invention. Figs. 2 and 3 represent side views thereof.

Similar letters of reference indicate corresponding parts in the several figures.

My invention consists of a door or shutter bolt, which may be tightly held in position and easily opened, as will be hereinafter fully set forth.

Referring to the drawings, A and B represent face-plates, which are attached, respectively, to a door and door-frame or to shutters, as required.

C represents a lug, which projects laterally from a head, D, and is somewhat oval in form, said head being eccentrically pivoted to a projection, E, on the face-plate A. From the face-plate B projects a catch, F, which has an opening, G, of the form of the lug C, and receives the same, and on the upper face of the catch F, back of the top of said opening, is an inclined or curved face, H, on which the lug C is adapted to ride, as will be hereinafter set forth. The head D has a handle, J, pendent therefrom, whereby it may be readily rotated.

The operation is as follows: In order to bolt the door or shutters, the handle J is moved outwardly and upwardly, whereby the lug C is raised, and is thereby permitted to pass over the front end of the catch F. Then, by lowering the handle, the lug enters the opening G, and, owing to the eccentric axis of the head D, said lug tightens against the walls of said opening, thus firmly holding the door or shutters in position. By raising the handle J the lug C, owing to the eccentric axis of the head D, emerges from the opening G in a direction upward and rearward, and then abuts against the face H of the catch, after the manner of a fulcrum, thus partly opening the door or shutters, and as the lug is now in its highest position (see Fig. 3) the door or shutters may be opened, said lug passing freely over the catch and the parts being disconnected, as is evident. This feature of the action of the lug on the face H is especially serviceable for doors, shutters, &c., that stick or open hard.

Having thus described my invention, what I claim as new, and desire to secure by Letters Patent, is—

1. A lug projecting laterally from a head having an eccentric axis, and a keeper or catch formed with an opening to receive said lug, combined and operating substantially as and for the purpose set forth.

2. A lug projecting from a head having an eccentric axis, in combination with a keeper or catch formed with an opening to receive said lug, and a face on which said lug bears when removed from the opening of said catch, substantially as described.

PATRICK J. CONROY.

Witnesses:

JOHN A. WIEDERSHEIM,

A. P. GRANT.

UNITED STATES PATENT OFFICE.

THOMAS O. SCHRADER, OF ALLENTOWN, PENNSYLVANIA, ASSIGNOR TO THE DENT HARDWARE COMPANY, OF FULLERTON, PENNSYLVANIA, A CORPORATION OF PENNSYLVANIA.

LATCH FOR DOORS.

1,265,120. Specification of Letters Patent. Patented May 7, 1918.

Application filed April 6, 1917. Serial No. 160,121.

To all whom it may concern:

Be it known that I, THOMAS O. SCHRADER, a citizen of the United States, residing at Allentown, in the county of Lehigh and State of Pennsylvania, have invented certain new and useful Improvements in Latches for Doors, of which the following is a specification.

My invention has relation to a latch for closing refrigerator doors among other types of doors; and in such connection it relates to the particular constructive arrangement of the same.

The principal objects of my invention are first, to provide a latch with a bolt and an operating lever-handle to latch the door in either the raised or lowered position of the handle by manual pressure exerted against the door or simply slamming the same to thereby cause the bolt to snap into engagement with a keeper therefor; second to provide a latch in which the coiled spring thereof in the compressed condition of the same firmly holds the bolt of the latch so that by pressure exerted manually against the door the spring in expanding, will automatically cause the latch bolt to snap into engagement with the keeper to thus securely lock the door; and third, to provide a latch arranged so that the coiled spring thereof in the event of the spring becoming disarranged or broken, the operating lever-handle of the latch can be manipulated to either release or engage the latch bolt from or with the keeper to thus instantly open or close the door.

The nature and scope as well as characteristic features of my invention will be more fully understood from the following description taken in connection with the accompanying drawings forming part hereof, in which—

Figure 1, is a front elevational view of a latch for a door, embodying the salient features of my invention.

Fig. 2, is a vertical sectional view through the incasement for a latch for a door of my said invention, showing the detail arrangement thereof.

Fig. 3, is a side elevational view partly in broken section, showing the latching member extending through a slotted wall of the incasement therefor and the integral cam of the latching member and the coiled spring, the latter shown in an expanded condition and the operating lever-handle for manipulating the said cam to thereby position the said latch, for the locking of the door.

Fig. 4, is a front end view of the incased latch, with the operating lever-handle, the latching member being shown in a shifted condition with the operating lever handle elevated, whereby upon pressure exerted against or slamming of the door the latch will snap under the keeper-head in the manner for example, as shown in Fig. 1.

Fig. 5, is a rear elevational view of the internal arrangement of the latching element and operating lever-handle.

Fig. 6, is a similar view of a slightly modified form of the operating lever-handle and latching member cam, in this instance provided with a recess for engaging the lug of said handle therein, for shifting said member; and

Fig. 7 is a side elevational view of the keeper, for the latching member.

Referring to the drawings *a*, is a door and a^1, a door frame surrounding the same. The frame a^1, is provided with a keeper a^2, having an inclining offset head a^3, and a rear projection forming a stop or rest a^4, for purposes to be presently explained. *b*, is an incasement provided with end base seats b^1 and b^1, for securing the same to the door *a*. The incasement is provided with a front oblong vertical slot b^2, and with a semi-circular slot b^3, in one of the side walls of the said incasement *b*, both of which slots are provided for purposes to be presently fully explained. The latching member b^4, projects through the semi-circular slot b^3, and is provided with a cam b^5, movably mounted on a spindle or pin b^6, fixed to the side walls of the casing *b*, as clearly shown in Fig. 5. To the forked portion of the cam b^5, is pivoted a slotted connecting rod b^7, carrying thereon a coiled spring *c*; the opposite end of said rod is mounted on a rear spindle or pin b^8, fixed to the side walls of the casing *b*, as clearly shown in Fig. 5. The coiled spring *c*, abuts at one end against the rear portion of the latch cam b^5, and at the opposite end against the spindle or pin b^6. The operating lever-handle *d*, in its preferably curved form extends through the vertical slot b^2, in the front of the casing *b*, and which lever-handle is operable to revolve partially the cam b^5, to thereby actuate the latching member b^4, in the slot b^3,

as clearly shown in Fig. 1. The lever-handle d, is connected with the latch cam b^5 by means of a link b^9, for positively actuating the same and thus to provide a range of movement in substantially the arc of a circle through the slot b^4, of the incasement b, to permit of the setting and holding of the said member to the rear rest a^4 of the keeper-head for while in such position by slamming or pressing the door a, against the frame a^1, to cause the latching-member under compression of the spring c, to be released and snap in a forward direction from the said rest a^4, beneath the head a^3, of the keeper a^2. The latching-member as thus arranged can be manipulated for locking the door in either the lifted or lowered position of the handle d. Furthermore the latch-cam spring b^5, in its expanded position with the latching member b^4, engaged by the head a^3, of the keeper a^2, will hold the door a, in a tightly closed condition against the frame a^1.

The operating lever-handle d, is arranged as shown in Fig. 5, spanning the pin or spindle b^6, and on which the latch-cam b^3, is movably mounted. The extension of the handle d, is held in required alining relationship on the rear spindle or pin b^8, by means of a collar b^{10}, applied thereto, as clearly shown in Fig. 5. This handle is so arranged as to be adapted to release the latching member from its engagement with the keeper-head a^3, whether the cam spring is in a good working condition or not, by simply actuating the same in an upward direction which opens the door a; moreover, it is adapted due to its arrangement to force the door into an open position should the door become swollen or tightened from any cause, by simply manipulating the same, in a vertical direction.

The latch of Fig. 6 in constructive arrangement is the same as hereinbefore described, save that the latch-cam in this instance is formed with a deep recess b^{11}, and the operating lever-handle d, is provided with a side lug d^1, for engaging in said recess for thereby operating said cam and shifting the latching member an integral part of the said cam. In all other respects the latch is the same as illustrated in Figs. 1 to 5 inclusive.

Having described the nature and objects of my invention, what I claim as new and desire to secure by Letters Patent is:—

1. The combination, in a latch, of a keeper and a cam having a bolt formed therewith and engaging said keeper, a cross-pin, a rod mounted on said pin and connected with said cam, an operating lever-handle pivotally connected with said pin and a link connected with said handle and cam opposite the position of the bolt of said cam, substantially as and for the purposes described.

2. The combination in a latch, of a keeper and a cam having a bolt arranged to engage said keeper, a cross-pin, a rod slidably mounted on said pin and connected with said cam, a spring mounted on said rod, the terminals whereof respectively, bear against said pin and cam, an operating lever-handle pivotally connected with said pin and a link connected with said handle and cam opposite the position of the bolt of said cam, substantially as and for the purposes described.

3. The combination, in a latch, of a keeper and a cam having a bolt arranged to engage said keeper, said cam provided with a recess, a cross-pin, a rod mounted on said pin and connected with said cam, a spring mounted on said rod, the terminals whereof respectively, bear against said pin and cam, an operating lever-handle having a lug arranged to engage the recess of said cam, and said handle pivotally connected with said pin, substantially as and for the purposes described.

In witness whereof, I have hereunto set my signature in the presence of two subscribing witnesses.

THOS. O. SCHRADER.

Witnesses:
MABEL G. DAVIS,
ELSIE V. LICHTY.

Copies of this patent may be obtained for five cents each, by addressing the "Commissioner of Patents, Washington, D. C."

Dec. 29, 1925. 1,567,866

T. O. SCHRADER

LEVER LOCK FOR REFRIGERATOR DOORS

Filed July 23, 1925

Fig. 2.

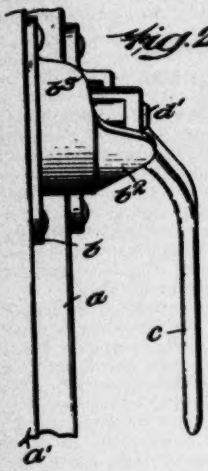


Fig. 1.

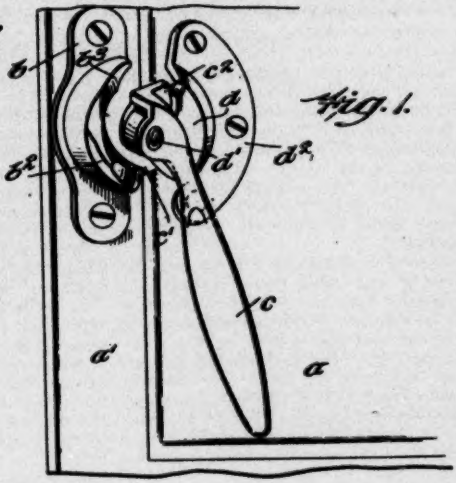


Fig. 4.

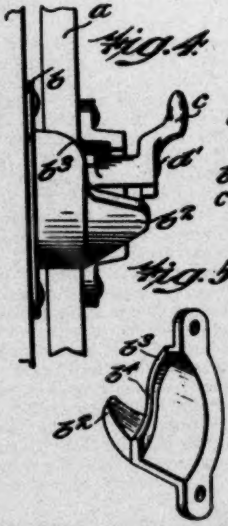


Fig. 3.

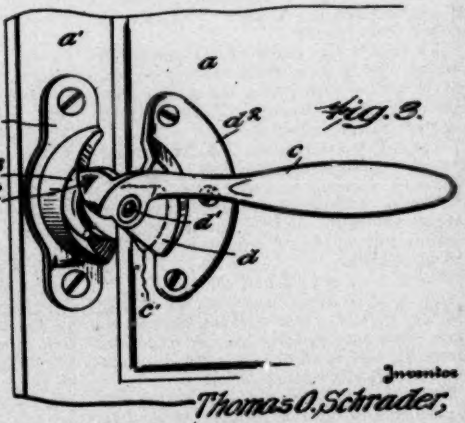


Fig. 5.

Inventor
Thomas O. Schrader,
By Thedinsheus & Fairbanks
Attorneys

Patented Dec. 29, 1925. 1,567,866

UNITED STATES PATENT OFFICE.

THOMAS O. SCHRADER, OF ALLENTOWN, PENNSYLVANIA, ASSIGNOR TO DENT HARDWARE CO., OF FULLERTON, PENNSYLVANIA, A CORPORATION OF PENNSYLVANIA.

LEVER LOCK FOR REFRIGERATOR DOORS.

Application filed July 23, 1923. Serial No 45,338

To all whom it may concern:

Be it known that I, THOMAS O. SCHRADER, a citizen of the United States, residing at Allentown, in the county of Lehigh and State of Pennsylvania, have invented certain new and useful Lever Locks for Refrigerator Doors, of which the following is a specification.

My invention relates to a lever lock for refrigerator and other doors designed to automatically lock the door by slamming and to be released by manual elevations of the lever arm of the lock to cause a cam-like projection of the said arm to ride an inclined surface of the keeper for the said lock and coincidently of the locking tongue engaging an overhanging part of the said keeper to free the tongue therefrom and thus the door to instantly assume an open position.

To the foregoing ends, my invention consists of a lever lock constructively arranged in substantially the manner hereinafter described and claimed.

The nature and scope of my present invention will be more fully understood from the following description taken in connection with the accompanying drawings forming part hereof, in which:

Fig. 1, is a perspective of a fragmentary part of a refrigerator door and the jamb of the same, showing in application thereto a lever-lock embodying constructively arranged the main features of my said invention and as shown with the door in a locked condition.

Fig. 2, is an end view of the same.

Fig. 3, is a perspective view of a fragmentary part of a door and the jamb of the same, showing the lever-lock in connection therewith and as shown with the door ajar or in a partially open position.

Fig. 4, is an end view of the keeper with the lever lock in the position it occupies with respect to the said keeper, when the door is ajar or in a partially open position; and

Fig. 5, is a perspective view of the rear of the keeper, showing the inner overhanging ledge in detail arrangement thereof.

For the purpose of illustrating my invention I have shown in the accompanying drawings one form thereof which is at present preferred by me, since the same has been found in practice to give satisfactory and reliable results, although it is to be understood that the various instrumentalities of which my invention consists can be variously arranged and organized and that my invention is not limited to the precise arrangement and organization of the instrumentalities as herein shown and described.

Referring to the drawings: a represents a fragmentary part of a door; and a^1 the surrounding jamb for the door.

b, is the flat portion of the keeper of the lever lock of my invention secured to the door jamb a^1. This keeper is formed with a semi-circular part the lower front edge of which is provided with a cone-like front b^2, terminating in an upper curvilinear cam-like surface b^3. In the front coned portion of the keeper is provided an overhanging ledge b^4, so that in slamming the door locking the same by the front tongue c^1, of the long lever arm c, of the lock engaging under the ledge b^4, to thereby irstantly hold the door in a closed position.

This lever arm c, is also provided with an integral, rear, cam-like projection c^2, arranged to ride the cam-like surface b^3, of the keeper b, through manipulation of the said lever-arm c, in an upward direction to release the door from its locked position and thus the door to assume a partially open position, as shown in Fig. 3. The bifurcated part of said lever arm c, is pivoted at d^1, to a segment-like bearing d, the flat base d^2, of which is suitably secured to the door a, as clearly shown in Figs. 1 and 3.

By a semi-rotary movement of the lever arm c, through pressure exerted against the door it is locked, but to bring the door into an absolutely air-tight condition with relation to the jamb a^1, this is accomplished by simply exerting a slight downward pressure on the said lever arm c, as well as easily and quickly released from such locked position by the elevating of the said lever arm slightly to thus free the front tongue c^1, of the said lever arm c, from the ledge b^4, of the keeper b, as clearly shown in Figs. 3 and 4.

Having thus described my invention, what I claim as new and desire to secure by Letters Patent, is:

A construction of the character stated comprising a housing, a door, a keeper having a flat rear plate secured to said housing and projected forwardly from which is a

semi-circular member, the forward upper edge of said member being provided with an inclined cam-like surface and the lower forward edge of said member having extended forwardly therefrom a relatively cone-like formation provided with an inner, overhanging ledge, the outer curved surface of said semi-circular member being continuous and uninterrupted, a lever arm having a bifurcated portion one extension of which is provided with a front tongue and a rear cam-like projection formed integral with said bifurcated portion, a flat plate secured to said door and provided with a segmental portion which segmental portion is accommodated by said bifurcated portion, a horizontally arranged pivot for connecting said lever and said segmental portion whereby said tongue and rear cam-like projection are respectively arranged to automatically engage the keeper ledge, to lock the door, and to manually permit by riding of said cam-like surface the release of the door from a locked condition.

THOMAS O. SCHRADER.

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Dec. 29, 1925. 1,567,867

T. O. SCHRADER

LEVER LOCK FOR REFRIGERATOR DOORS

Filed July 25, 1925

Fig. 1.

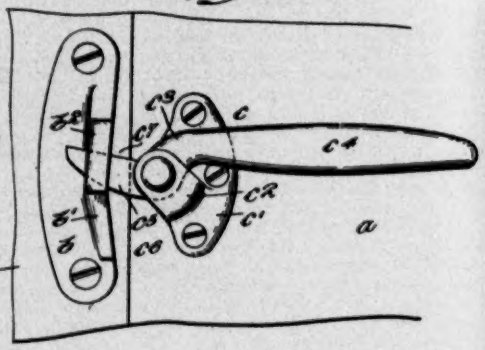


Fig. 2.

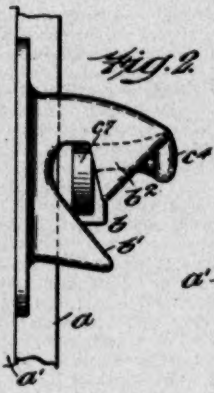
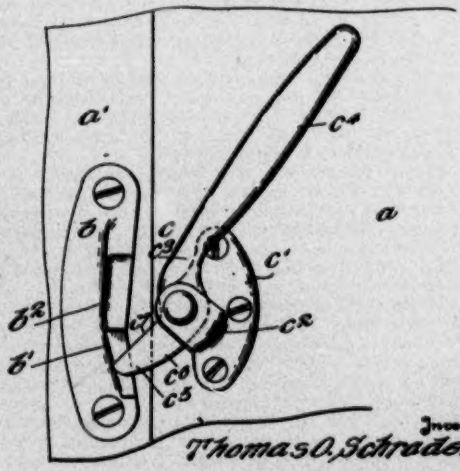


Fig. 4.



Fig. 3.



Inventor
Thomas O. Schrader,
By Middleton & Corbett
Attorneys

Patented Dec. 29, 1925. 1,567,867

UNITED STATES PATENT OFFICE.

THOMAS O. SCHRADER, OF ALLENTOWN, PENNSYLVANIA, ASSIGNOR TO DENT HARDWARE CO., OF FULLERTON, PENNSYLVANIA, A CORPORATION OF PENNSYLVANIA.

LEVER LOCK FOR REFRIGERATOR DOORS.

Application filed July 25, 1925. Serial No. 45,954.

To all whom it may concern:

Be it known that I, THOMAS O. SCHRADER, a citizen of the United States, residing at Allentown, in the county of Lehigh and State of Pennsylvania, have invented a certain new and useful Lever Lock for Refrigerator Doors, of which the following is a specification.

My invention relates to a lever lock for application to refrigerator and other doors constructively designed so that in position locking the door through a slight pressure exerted against the door and this irrespective of what the position of the lever may be prior to a closed condition of the door.

My invention further embraces a lever lock constructively arranged so that through slight energy exerted from the under side to elevate the same will cause the closed door to become ajar or assume a partially open position.

My invention still further embraces a lever lock constructively considered that permits by slight energy exerted from the upper side to cause the door in either the partially open or the actually closed condition to be wedged firmly so as to assume an air-tight condition with respect to fixed surroundings with which the door is in bearing contact.

To which foregoing ends, my invention, stated in general terms, consists of a lever lock of the character defined and constructively arranged in substantially the manner hereinafter described and claimed.

The nature, characteristic features and scope of the invention will be more fully understood from the following description taken in connection with the accompanying drawings forming part hereof, in which:

Fig. 1, is a front elevational view of a fragmentary portion of a refrigerator door and surrounding framework, showing a lever-lock embodying constructively the main features of my invention in a wedgingly locked position thereto.

Fig. 2, is an end view of the same.

Fig. 3, is a fragmentary front view of the door and surroundings, with the said lever lock shown in an elevated position and with the door ajar or in a partially open position; and

Fig. 4, is an end view of the same.

For the purpose of illustrating my invention I have shown in the accompanying drawings one form thereof which is at present preferred by me, since the same has been found in practice to give satisfactory and reliable results, although it is to be understood that the various instrumentalities of which my invention consists can be variously arranged and organized and that my invention is not limited to the precise arrangement and organization of the instrumentalities as herein shown and described.

Referring to the drawings, a, represents a fragmentary portion of a door; and a^1 the surrounding jamb.

b, is the keeper of the lever lock of my invention, secured to the jamb a^1. This keeper consists of an inclined surface projection b^1, with a recessed tongue b^2, of cone shape, in longitudinal section. The keeper is securely fastened to the jamb a^1.

c, is a bell crank lever-arm of the said lever lock, provided with a base c^1, suitably fastened to the door and having a struck-up bearing c^2, positioned at an acute angle to a vertical plane through the said base. This lever c, is bent upward, as at c^2, from the bifurcated bearing portion c^2, as clearly shown in Fig. 4, and terminating in a long arm or handle c^4. The opposite end of the lever from the bearing portion c^2, is formed into a contracted or narrowed formation c^5, arranged so as to readily ride the inclined formation b^1, of the keeper b, and take under the notched tongue b^2, of the said keeper b, as clearly shown in Fig. 1, by simply exerting a slight pressure against the door tending to a closed condition of the same, which is completed coincidently by the action of the bell crank lever to cause the door to assume the position, for example, as shown in Fig. 2, with the door closed.

The underside of said part c^5 is curved convexly as at c^6 and the upper face is flat as at c^7. Then by a slight manual downward movement exerted on the lever-lock, the door is closed securely against the jamb a^1, in a thoroughly airtight condition. Again, by slightly elevating the lever c, for example, into the position as shown in Fig. 3, thereby causing the door a, to become ajar or partially open, as clearly shown in Fig. 4, and in such position by exerting a slight pressure against the door, to then slightly close the door.

It will be observed that the constructive arrangement of the keeper and lever con-

stituting the locking device of my invention is such as that the keeper will cause the lever to close the door, whether the long handle occupies a perpendicular or horizontal position. In a word, the said device provides a self closing lock for a refrigerator, whether of the household or cold storage type, by a slight pressure manually exerted against the door and with the lever lock, for example, occupying a position such as shown in Fig. 3.

Having thus described my invention, what I claim as new and desire to secure by Letters Patent, is:

A device of the character stated comprising a housing, a door therefor, a keeper for said housing comprising a plate secured thereto projected from which plate is a member provided with an inclined surface b^1 and a recessed tongue b^3 of cone-shape in longitudinal section, a lever-lock comprising a base plate secured to said door and having a bifurcated bearing portion, a lever pivoted between the forks of said bearing, the said lever terminating at one end in a handle curved from its pivot point upwardly as at c^2 and terminating at its opposite end in a contracted or narrow formation the under face of which is convexly curved at c^3 and the upper face of which is flat as at c^4.

In testimony whereof, I have hereunto signed my name.

THOMAS O. SCHRADER.

March 9, 1926. 1,575,647

T. O. SCHRADER

LOCK DEVICE FOR REFRIGERATOR DOORS

Filed June 30, 1925

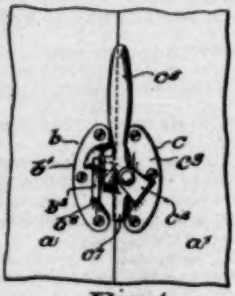


Fig. 1.

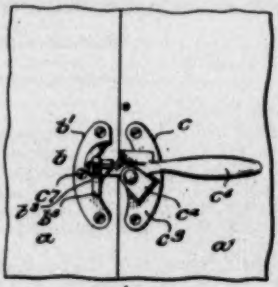


Fig. 2.



Fig. 3.

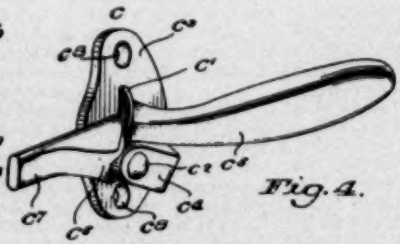


Fig. 4.



Fig. 5.

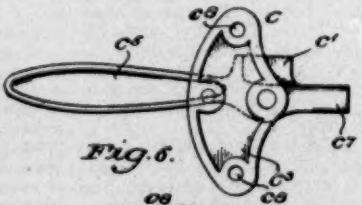


Fig. 6.



Fig. 7.

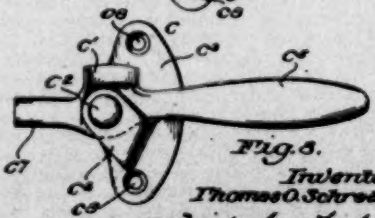


Fig. 8.

Inventor
Thomas O. Schrader
By Middleton & Sanford
Attorneys

Patented Mar. 9, 1926. 1,575,647

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UNITED STATES PATENT OFFICE.

THOMAS O. SCHRADER, OF ALLENTOWN, PENNSYLVANIA, ASSIGNOR TO DENT HARDWARE CO., OF FULLERTON, PENNSYLVANIA, A CORPORATION OF PENNSYLVANIA.

LOCK DEVICE FOR REFRIGERATOR DOORS.

Application filed June 30, 1925. Serial No. 40,474.

To all whom it may concern:

Be it known that I, THOMAS O. SCHRADER, a citizen of the United States, residing at the city of Allentown, in the county of Lehigh and State of Pennsylvania, have invented a certain new and useful Lock Device for Refrigerator Doors, of which the following is a specification.

My invention relates to a locking device for refrigerator and other doors; and in such connection it relates more particularly to a locking device adapted to be operated by the slamming or quick closing of the door, thereby to cause an automatic and instantaneous engagement between a movable tongue member and a stationary keeper of said locking device.

In the employment of locking devices on refrigerators, it is desirable, as well as important, to provide a fastening device for such structures that can be readily and quickly manipulated to both open and to close the door thereof, and also to maintain said door tightly locked, in the closed position, yet nevertheless, in such a manner as to be capable of being easily released when required; and to the foregoing ends, my present invention has been particularly designed, with a view to simplicity of structure and operation for effecting not only quick opening of the door but also quick closing of the same.

My invention, stated in general terms, consists of a refrigerator locking device constructively arranged in substantially the manner hereinafter described and claimed.

The nature and characteristic features of my invention will be more fully understood from the following description, taken in connection with the accompanying drawings forming part hereof, in which—

Figure 1 is a fragmentary view in elevation of refrigerator parts showing the same provided with a locking device embodying main features of my invention, with the door of the refrigerator shown in partly open position, and the locking device unlatched.

Figure 2 is a similar view with the locking device in latched position.

Figures 3 and 4 are respectively, enlarged, detached perspective views of the locking device of my present invention comprising the keeper member and the locking member.

Figures 5 and 6 are respectively, rear end views of the keeper and tongue members of the automatically actuating refrigerator lock, defining the particular arrangement of the same, and

Figures 7 and 8 are similar views from the opposite side of the respective keeper and tongue members, showing the structural arrangement of the same.

For the purpose of illustrating my invention I have shown in the accompanying drawings several forms thereof which are at present preferred by me, since the same have been found in practice to give satisfactory and reliable results, although it is to be understood that the various instrumentalities of which my invention consists can be variously arranged and organized and that my invention is not limited to the precise arrangement and organization of the instrumentalities as herein shown and described.

Referring to the drawings the reference letter a designates a refrigerator structure and a^1 the door thereof. There is shown applied to the structure a, the keeper member b, of my invention, which in structural arrangement, consists of a baseplate b^1, formed with apertures b^2 for the reception of screws, to adapt the same for being secured in place, adjacent to the door opening. The keeper plate b^3 is formed integral with the base plate b^1 and projects upwardly therefrom at substantially a right angle thereto. The keeper plate b^3 is provided with the rear and front downwardly converging concaved edges b^4 and b^5 respectively; meeting in the downwardly projecting nose b^6. The keeper plate b^3 is hollowed out at b^7 on its inner side and is provided with a laterally projecting pin b^8, formed integral therewith and having the convexed front surface b^9, forming a riding surface for a cam c^1, of the locking member c, to be presently fully explained. The laterally projecting pin b^9 of the keeper plate b^3 serves to encounter a cam c^2 of the latch member c when the door is closed, thereby causing the handle c^3 of said latch member c to swing into a horizontal locking position and hence causing the tongue c^4 thereof to be wedged upwardly against the rear concaved edge b^4 of the

keeper plate b^3, by the weight and momentum of the handle c^3, thereby to hold said tongue c^7 securely in such locked position until it is desired to open the door a', for any purpose.

The latch member c consists of a base plate c^3, perforated at c^4, for the reception of screws and provided with a right angular bearing bracket c^6, formed integral therewith, which is adapted to support the pivotal latch c^8. The pivotal latch c^8, carried by the pivot pin or rivet c^9, consists of the handle portion c^3 and the tongue c^7 extending in the opposite direction and in alinement therewith, and is also provided with the inclined concaved cam c' also formed integral therewith, as shown particularly in Figure 4.

The described arrangement of keeper and latch is such that by slamming of the door with the lever rod or handle in a substantially vertical position and with the cam c^5 thereof laterally projecting, the latter will contact with the pin b^9 of the keeper b, so that the handle b^5 will be deflected downwardly causing the tongue to enter the recess b^{10} behind the keeper plate b^3 at the same time the cam c^5 will ride onto the pin b^9, of the said keeper to impart momentum to the handle b^5 and thus to force the tongue c^7 into a wedging position in the recess b^{10} of said keeper thereby to hold the door securely against opening until a reversed movement of the lever rod which causes the cam to ride again over the pin b^9, of the keeper, and simultaneously therewith, causing the tongue c^7 to be withdrawn from the recess b^{10} of the keeper b. In this position, the door occupies an open relation with respect to the refrigerator for access thereto.

The fastener will close automatically, due to the cam action, whether the handle is in horizontal or perpendicular position. When in horizontal position the tongue c^7 rides the strike, or concave edge b^5, and the cam c^5 will strike the pin b^9 as the tongue reaches the nose b^4 or lower terminal of the front concaved edge b^5, and give it momentum to throw the tongue under the rear concaved edge b^4 of the keeper plate into recess b^{10}, closing the latch or fastener. When in perpendicular position the cam c^5 rides the pin b^9, giving the handle momentum to throw the tongue c^7 under the keeper plate b^3 into the recess b^{10}, again throwing the latch into locked position.

I am aware of Patent No. 1385102 dated July 19, 1921, and I disclaim the structure therein disclosed, as my invention is differentiated therefrom, since whereas the structure disclosed in said patent utilizes a pin 12 carried by the latch arm 11, which coacts with an upper cam edge 18 of the keeper member 17; in my novel construction the upper edge of my keeper plate b^3 has no function, but the pivotal latch c^8 carries a cam c^5 inclined to the pivot of said latch and adapted to coact with a pin b^9 carried by and laterally projecting from, the inner wall of the keeper plate b^3 thereby to swing the terminal tongue of the latch into the horizontal locking position; and to none of the constructions of the prior art do I herein make claim.

It will now be apparent that I have devised a novel and useful construction which embodies the features of advantage enumerated as desirable in the statement of the invention and the above description and while I have in the present instance shown and described the preferred embodiments thereof which have been found in practice to give satisfactory and reliable results, it is to be understood that the same are susceptible of modification in various particulars without departing from the spirit or scope of the invention or sacrificing any of its advantages.

Having thus described my invention what I claim as new and desire to secure by Letters Patent, is:—

1. In a device of the character stated a fixed structure having an opening, a door for closing said opening, a keeper having a pin projecting laterally from its inner wall and a rear cam riding surface and a bottom recessed portion, a locking member for said door comprising a pivotal handle having a projected tongue in substantial alignment with the handle, said handle having an upper cam arranged at an angle to said handle and tongue whereby closing of said door causes said cam to be engaged by said pin to tilt said handle and to cause said tongue to engage said bottom recessed portion to automatically lock said door.

2. In a device of the character stated a fixed structure having an opening, a door for closing said opening a keeper of integral structure having a pin projecting laterally from its inner wall, said pin having its outer wall substantially convexed, and a rear cam riding surface and a bottom recessed portion, a locking member for said door comprising a pivotal handle having a projected integral tongue in substantial alignment with the handle, said handle having an upper cam arranged at an angle to said handle and tongue and integral therewith whereby closing of said door causes said cam to be engaged by said convexed pin to tilt said handle and to cause said tongue to engage said bottom recessed portion to automatically lock said door.

3. In a device of the character stated, a keeper plate having a bottom front, down and rearwardly inclined cam edge and a rear substantially upright locking edge, a pivotally mounted latch member including a handle and a terminal tongue in substantial alignment with each other, and an up-

per cam carried thereby, inclined to the axis of the pivot of said latch member; said terminal tongue being adapted to ride downwardly along said front cam edge of said keeper plate to deflect said latch member into a substantially upright position and said tongue being adapted to interlock with said upright rear locking edge on said keeper plate, when said latch member is in a substantially horizontal position, and a laterally projecting pin carried by the inner wall of said keeper plate and adapted to coact with said upper inclined cam carried by said latch member to deflect the latter from a substantially upright to a horizontal position, so as to cause said terminal tongue to interlock with said rear locking edge of said keeper plate.

THOS. O. SCHRADER.

[fol. 161] Defendant's Exhibit No. 1C

UNITED STATES DISTRICT COURT, EASTERN DISTRICT OF WISCONSIN

ALEXANDER F. WINTERS & BASIL R. CRAMPTON

vs.

SANITARY REFRIGERATOR COMPANY

Downing British Pat. #16,566 of 1891

Nettie Bussinger, Examiner

Wiedersheim & Fairbanks, Philadelphia, Pa.

No. 16,566 (Coat of Arms) A. D. 1891

Date of Application, 29th Sept., 1891. Accepted, 14th Nov., 1891

Complete Specification

Improvements in Fasteners

A Communication from Abroad by Jules Dufaux, Henry Mathieu, and Ernest Andre, All of 89, Rue de la Mare, Paris, in the Republic of France, Manufacturers

I, George Clement Downing, of 8 Quality Court, London W. C., Patent Agent, do hereby declare the nature of my said invention and in what manner the same is to be performed, to be particularly described and ascertained in and by the following statement:

The object of my invention is to manufacture an improved form of fastener, suitable for locking or securing card board boxes, work boxes, glove and other boxes, Gladstone and other bags, satchels, reticules, pocket books, purses, doors, windows, and other articles requiring the same.

And in order that my said invention may be particularly described and ascertained, reference is hereby made to the

accompanying drawings, in which similar letters of reference indicate corresponding parts.

Fig. 1 shows the invention, unfastened.

Fig. 2 shows the same, fastened.

[fol. 162] Fig. 3 shows one method of fitting the invention to an ordinary box.

Fig. 4 shows the application of the same to a purse or pocket book.

Figs. 5, 6 and 7 illustrate methods of applying the invention to the slats of corsets.

The invention consists of a hook pivoted to a plate, and a stud arranged to enter a slot in the plate, and becomes fixed therein by means of the hook.

Referring to Figs. 1 and 2 A is the stud, which is fixed to the box lid, pocket book flap, or analogous portion of the article, *b* is a plate, which is fixed to the front of the box or other article, *o* is the slot or opening in the plate for the passage of the stud to its position for locking. *f* is a forked hook, pivoted to the plate *b* at *p*. When the device is in the position shown in Fig. 1, the descent of the stud causes contact with the arm f^1 of the hook *f* and the stud turns the hook upon its pivot to the position shown in Fig. 2. The arm f^{11} is thus caused to embrace the stud, which becomes locked in the angular recess.

When the fastening is required to be unlocked, the hook *f* is turned to the position shown in Fig. 1. This may be effected by hand, by moving the lever *l*, as shown in Fig. 1, or by means of a square stud to be turned by a key, as shown at *p*. Fig. 3, wherein the device is shown fitted to a box, the stud A being attached to a tab fixed to the lid. The pivot *p* is in some cases prolonged so as to project outside the box; or it may be arranged so as to be visible outwardly; or it may be concealed so as to form a secret fastener.

In Fig. 4 the invention is shown as applied to pocket books, port-folios, purses, and the like. The plate *b* is furnished with riveting spurs *d d*, which pass through the fabric and are riveted over at the back. The hook *f* is provided with a lever arm *l* for opening the fastener.

In Figs. 5 and 6 the application of the invention to corsets is illustrated. C C^1 are the two slats of the corset. Studs A A^1 are fixed to one slat, C, and non-rotating hooks B b^1 are fixed to the slat C^1. The locking hook *f* is pivoted

to the hook B at *p*, so that when the slat C descends from the position shown in Fig. 6 to that shown in Fig. 5, the hook *f* is rotated upon the pivot *p*, and the relative positions of the slats C C^1 are secured, as shown in Fig. 5. Generally only one of these composite fasteners is used for each corset, this being preferably fixed at the bottom of the [fol. 163] slat, the upper fastenings being formed with fixed hooks b^1 having slots o^1 for the studs A^1 to fall into. All the studs A and A^1 being fixed upon the slat C, act conjointly; and, when the lower stud is withdrawn from its eye, by turning the hook *f* with the aid of its lever *l*, the pressure exerted upon this stud causes the slat C to rise, so that all its studs A A^1 are simultaneously withdrawn from their corresponding fasteners, and the corset is opened throughout its length. The rotation of the hook *f* may be limited by a stop *i* formed therewith. To fasten the corset it is sufficient to press the lower stud A into the fastened B, which is then automatically closed by the forked hook *f*, the remaining studs falling into their respective hooks automatically and securely.

In Fig. 7 a modification of the corset fastening is shown. In this case the hook B is formed similarly to those now in use for corset slats, and only differs therefrom in the lateral opening. The forked hook B is provided with two, nearly similar, prongs; one of which, viz: that closing the opening, has a claw *g*, pivoted at *p*, holding the stud A in the eye of the hook. The elbow *e*, closed by the claw *g*, is combined so as to cause the forked hook to prevent the stud being withdrawn; the stud which is hooked in the usual manner in the hook B, enters the eye *h* in such a manner that it cannot move back, being prevented by the claw *g*. To still further secure the closing of the hook B by the claw *g*, the tail g^1 of the latter is pressed by a spring *r*, fixed upon the slat, and held under an arm *s* of the hook B.

It is obvious that the corset fastenings may be very much varied in matters of detail, while retaining the principal parts, consisting of the hook *b* having a side opening *o*, and the fork *f* having an elbow *e* so formed as to cause the pressure of the stud A to retain the hook in a secure position.

Having now particularly described and ascertained the nature of my said invention, and in what manner the same is to be performed, I declare that what I claim is:—

1. The improved fastener consisting of the combination of a stud A, a slotted plate *b*, and a pivoted hook *f*, the hook *f* being so formed that when the stud enters the slot *o*, the hook *f* is caused to rotate upon its pivot and securely retain the stud in the fork *e* of the hook, substantially as hereinbefore described and illustrated by the drawings.

2. The application and use of the improved fastener to the slats of corsets in combination with fixed hooks B b^1 [fol. 164] and studs A^1 severally operating substantially as hereinbefore described and illustrated by Figs. 5 and 6 of the drawings.

3. The modification of the improved fastener in its application to the slats of corsets, substantially as hereinbefore described and illustrated by Fig. 7 of the drawings.

4. The general construction arrangements and combinations of the several and respective parts, together forming my invention of improvements in fasteners, substantially as hereinbefore described and illustrated by the drawings.

Dated 29th September 1891.

George C. Downing.

London: Printed for Her Majesty's Stationary Office by Darling & Son, Ltd.—1891

(Here follow side folio pages 165 & 166, 167 & 168, 169 & 170.)

[fol. 171] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 172] Citation, in usual form, showing service on Louis O. French, filed March 25, 1927, omitted in printing.

[fol. 172*a*] Clerk's certificate to foregoing transcript omitmitted in printing.

Fig. 1.

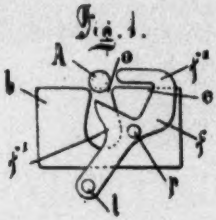


Fig. 2.

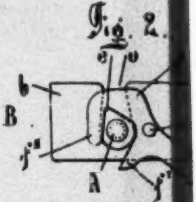


Fig. 3.

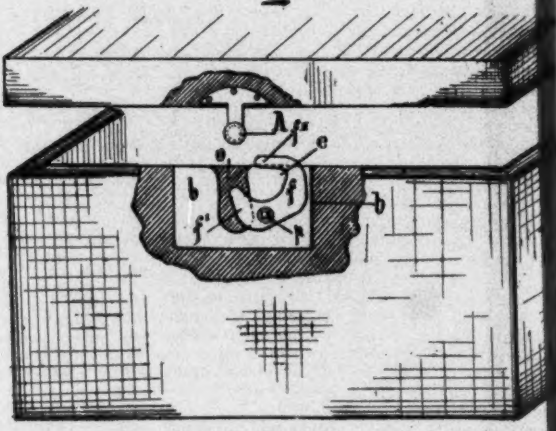
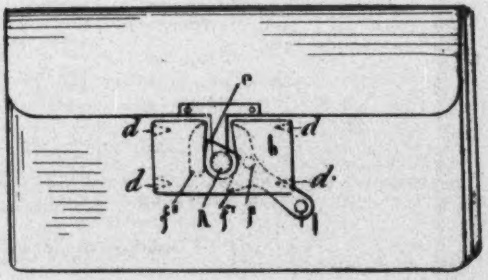


Fig. 4.



Sep. 29. N°. 16,566.
Complete Specification.

(1 sheet)

165-166

Fig. 1.

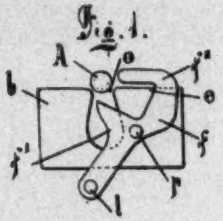


Fig. 2.

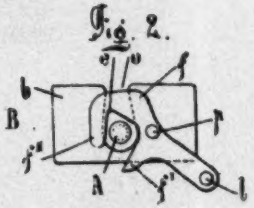


Fig. 3.

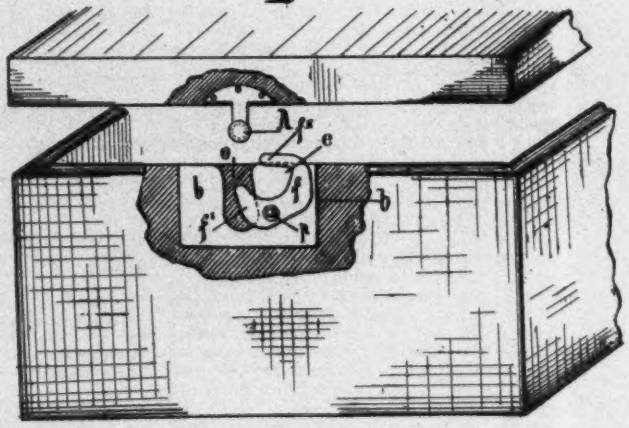


Fig. 4.

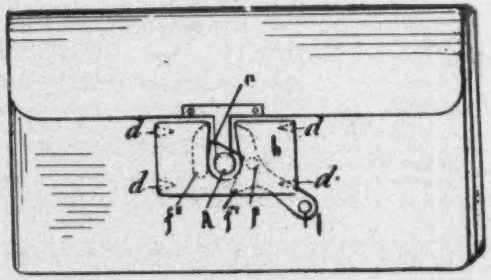


Fig. 5.

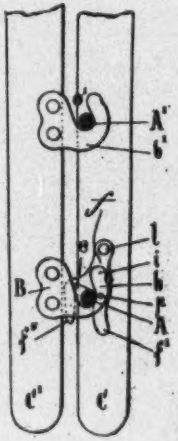


Fig. 6.

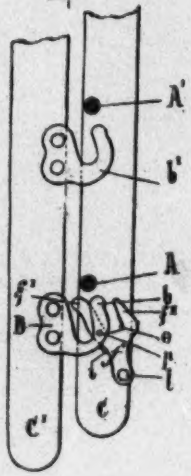
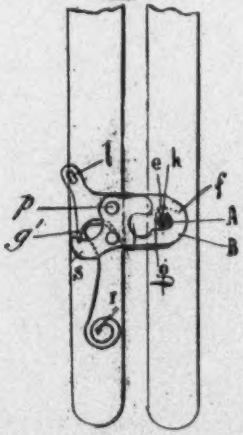
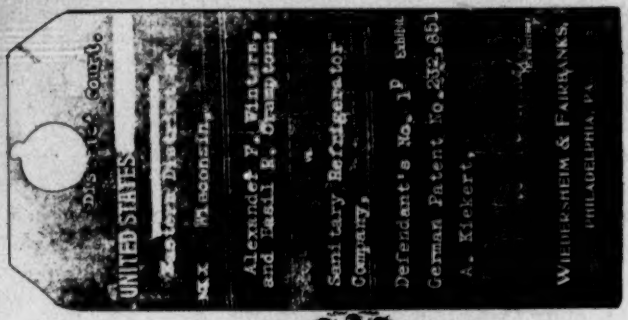


Fig. 7.



[This Drawing is a reproduction of the Original on a reduced scale.]

London: Printed by [illegible]
for Her Majesty's Stationery Office [illegible]



KAISERLICHES PATENTAMT.

PATENTSCHRIFT

№ 232851

KLASSE 68 *d*. GRUPPE 34.

AUGUST KIEKERT IN HEILIGENHAUS, RHLD.

Band für Fensterläden und Türen.

Patentiert im Deutschen Reiche vom 31. Juli 1910 ab.

Die Erfindung betrifft ein Band für Fensterläden und Türen, welches mit einer Vorrichtung versehen ist, durch die der Laden in geöffneter Lage festgestellt werden kann.

Von bekannten Vorrichtungen dieser Art unterscheidet sich der Erfindungsgegenstand dadurch, daß die Feststellvorrichtung aus einem am Band drehbar befestigten und durch einen Schlitz desselben hindurchgeführten Schnepper besteht.

Das Band gemäß der Erfindung ist auf der Zeichnung in einer Ausführungsform veranschaulicht.

An der Rückseite des Bandes sind zwei Winkel *a* befestigt, zwischen welchen ein durch einen Schlitz des Bandes hindurchgeführter Schnepper *b* drehbar befestigt ist. Dieser steht unter dem Einflusse einer Feder *c* und ist hinten mit einem als Griff dienenden Auge *d* versehen. Das Band wird wie üblich an dem Laden oder der Tür befestigt, nur daß diese mit einem Schlitz oder Einschnitt zum Hindurchführen und zur Aufnahme für den hinter dem Band liegenden Teil der Schneppervorrichtung zu versehen ist. Beim Öffnen des Ladens schnappt der Schnepper mit der Nase hinter einen in der Wand befestigten Winkel *e*. Mit diesem kann ein zweiter Winkel *f* verbunden sein, gegen den der Schnepper vorm beim Aufwerfen des Ladens trifft und der verhindert, daß die Wand beschädigt wird.

Da das Band gleichzeitig als Träger für die Schneppervorrichtung dient, so stellt sich diese billiger, als wenn sie für sich anzubringen wäre und mit besonderen Befestigungsplatten versehen sein müßte. Weiter ist auch die Anbringung einfacher, da beim Befestigen des Bandes die Schneppervorrichtung ohne weiteres mit dem Laden verbunden wird. Die Anordnung ist auch noch insofern vorteilhaft, als häufig die Rahmen der Laden so schmal sind, daß nicht genügend Raum zur Anbringung einer besonderen, aus einem Schnepper o. dgl. bestehenden Feststellvorrichtung verbleibt. Selbstverständlich können auch Bänder anderer Art, beispielsweise Winkelbänder mit der Feststellvorrichtung versehen werden.

Patent-Anspruch:

Band für Fensterläden und Türen, welches mit einer Vorrichtung versehen ist, durch die der Laden in geöffneter Lage festgestellt werden kann, dadurch gekennzeichnet, daß die Feststellvorrichtung aus einem am Band drehbar befestigten und durch einen Schlitz desselben hindurchgeführten Schnepper besteht.

Hierzu 1 Blatt Zeichnungen.

Fig. 1.

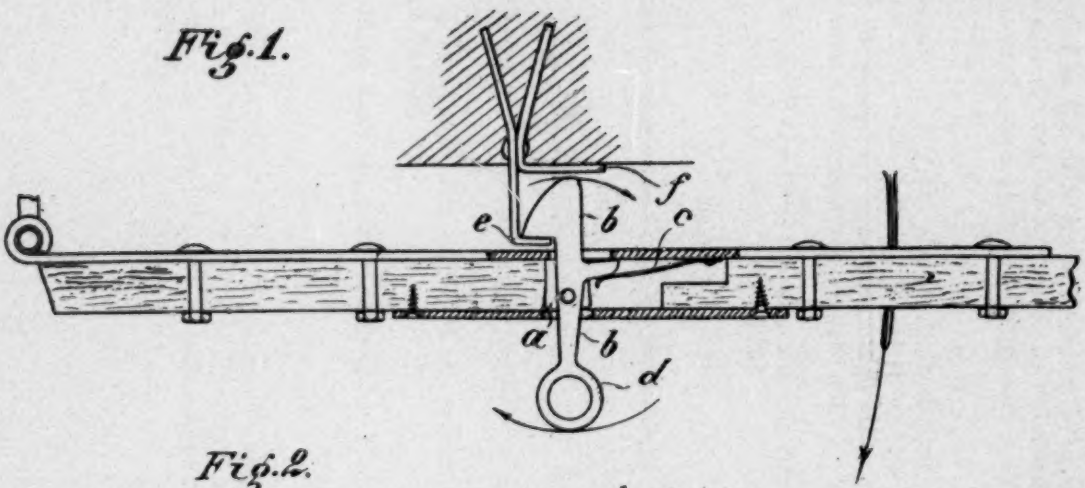
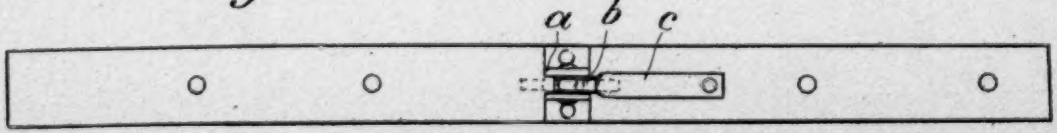
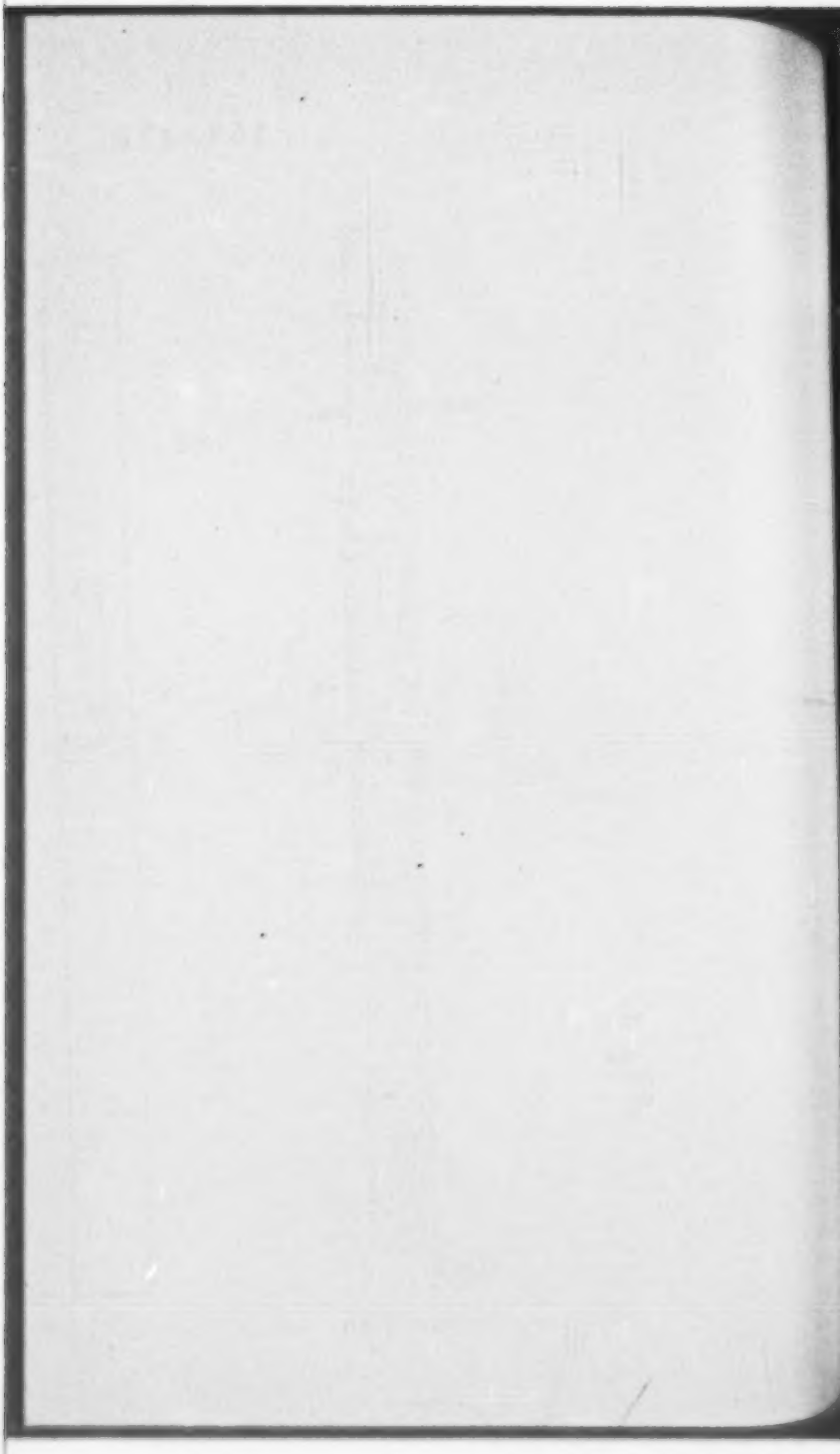


Fig. 2.



169—170.



At a regular term of the United States Circuit Court of Appeals for the Seventh Circuit begun and held in the United States Court Room in the city of Chicago in said Seventh Circuit on the fifth day of October, 1926, of the October Term, in the year of our Lord one thousand nine hundred and twenty-six and of our Independence the one hundred and fifty-first

And afterwards, to wit: On the thirtieth day of June, 1927, there was filed in the office of the clerk of this court an appearance of counsel for appellees, which said appearance is in the words and figures following, to wit:

UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT, OCTOBER TERM, 1926

No. 3935

SANITARY REFRIGERATOR COMPANY, Appellant,

vs.

ALEXANDER F. WINTERS et al.

The clerk will enter my appearance as counsel for the appellees.

Frank E. Liverance, Jr., #221-224 Houseman Bldg., Grand Rapids, Mich.

Endorsed: Filed June 30, 1927. Edward M. Holloway, Clerk.

And afterwards, to wit: On the fifth day of July, 1927, there was filed in the office of the clerk of this court an appearance of counsel for appellant, which said appearance is in the words and figures following, to wit:

UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT, OCTOBER TERM, 1926

No. 3935

SANITARY REFRIGERATOR COMPANY, Appellant,

vs.

ALEXANDER F. WINTERS et al., Appellees

The clerk will enter my appearance as counsel for the appellant.

E. Hayward Fairbanks, #1232 Chestnut Street, Phila., Pa.

Endorsed: Filed July 5, 1927. Edward M. Holloway, Clerk.

At a regular term of the United States Circuit Court of Appeals for the Seventh Circuit begun and held in the United States Court Room in the city of Chicago in said Seventh Circuit on the fourth day of October, 1927, of the October Term, in the year of our Lord one thousand nine hundred and twenty-seven and of our Independence the one hundred and fifty-second

And afterwards, to wit: On the third day of January, 1928, the following further proceedings were had and entered of record, to wit:

Tuesday, January 3, 1928.

Court met pursuant to adjournment and was opened by proclamation of crier.

Present: Hon. Samuel Alschuler, Circuit Judge, presiding; Hon. Evan A. Evans, Circuit Judge; Hon. George T. Page, Circuit Judge; Hon. Albert B. Anderson, Circuit Judge; Edward M. Holloway, Clerk; Palmer E. Anderson, Marshal.

Before Hon. Samuel Alschuler, Circuit Judge; Hon. Evan A. Evans, Circuit Judge; Hon. George T. Page, Circuit Judge

3935

SANITARY REFRIGERATOR COMPANY

vs.

ALEXANDER F. WINTERS et al.

Appeal from the District Court of the United States for the Eastern District of Wisconsin

It is ordered by the court that this cause be, and the same is hereby set down for hearing on Wednesday, January 11, 1928.

And afterwards, to wit: On the eleventh day of January, 1928, the following further proceedings were had and entered of record, to wit:

Wednesday, January 11, 1928.

Court met pursuant to adjournment and was opened by proclamation of crier.

Present: Hon. Samuel Alschuler, Circuit Judge, presiding; Hon. Evan A. Evans, Circuit Judge; Hon. George T. Page, Circuit Judge; Edward M. Holloway, Clerk; Palmer E. Anderson, Marshal.

3935

SANITARY REFRIGERATOR COMPANY

vs.

ALEXANDER F. WINTERS et al.

Appeal from the District Court of the United States for the Eastern District of Wisconsin

Now this day come the parties by their counsel and this cause now comes on to be heard on the printed record and briefs of counsel, and on oral arguments by Mr. E. Hayward

Fairbanks, counsel for appellant, and by Mr. Frank E. Liverance, Jr., counsel for appellees, and the court having heard the same takes this matter under advisement.

An afterwards, to wit: On the ninth day of February, 1928, there was filed in the office of the clerk of this court, the opinion of the court, which said opinion is in the words and figures following, to wit:

IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT, OCTOBER TERM, 1927, JANUARY SESSION, 1928

No. 3935

SANITARY REFRIGERATOR COMPANY, Appellant,

vs.

ALEXANDER F. WINTERS and BASIL R. CRAMPTON, Appellees

Appeal from the District Court of the United States for the Eastern District of Wisconsin

Before Alschuler, Evans, and Page, Circuit Judges

February 9, 1928.

EVANS, C. J.:

A patent, No. 1,385,102, to Winters and Crampton issued July 19, 1921, covering a latch, was the basis of the instant suit. Seven claims are involved, two of which (5th and 6th) are broad, generic claims, while the other five (1, 2, 3, 4, and 7) are narrow, specific claims.

The District Court sustained all claims and found appellant to be an infringer thereof. Thereafter appellees brought suit upon this same patent in the District Court for the eastern district of Pennsylvania and the court there held that claims five and six of the patent were invalid and the other five claims were not infringed by latches similar to the ones made by appellant.

Counsel, with commendable frankness, have made concessions in this court which greatly narrow the contro-

verted issues. Appellant admits the validity of claims, 1, 2, 3, 4, and 7, while appellees concede that claims 5 and 6 are invalid. The sole issue remaining, in view of these concessions, is one of infringement of the five valid claims. The concession that these five claims are valid was accompanied by the statement that validity was recognized only in view of an asserted construction which gave to each claim so narrow a field that infringement was not disclosed.

The inventor said:

"This invention relates to a latch of the swinging lever type, particularly adapted for use on refrigerators though applicable in many other relations where a door is to be closed and held in closed position. The swinging lever latch, or as it is better known, the Condit latch, is pivotally connected at one end to the door jamb or casing, allowing the door to be opened when the latch is thrown to an upper vertical position, and coming down across the meeting edges of the casing and door when swung to horizontal position, engaging with a cam member on the door to wedge the door tightly shut. This latch is a very serviceable latch but is relatively hard to operate due to its attachment to the casing instead of the door, and the same is liable to drop to horizontal position in which case the door cannot be closed without first raising the lever to upper vertical position while, many times, the door is inadvertently swung toward closed position and against the lever in its horizontal position with injury either to the lever or door or both. In the present invention, it is a primary object and purpose to provide a latch which may be pivotally connected to the door and which is automatically operated to engage with a retaining member or keeper fixed on the door casing when the door is closed irrespective of the vertical or horizontal position of the latch lever, working as well in the one case as the other. A further object of the invention is to construct a latch of few parts, whereby it may be economically made and which will be durable and efficient in service."

Two typical claims are one and seven, herewith quoted:

1. "In combination, a door and casing therefor, a keeper attached to the casing comprising a base, an outstanding post and a head at the outer portion of the post, said head

depending below the post and formed with upper and lower curved outer sides coming substantially to a point and with an inner upwardly and inwardly inclined side, a member attached to the door comprising a base, an integral outstanding post projecting from the base and a laterally extending arm at the upper end of the post paralleling the base, and a latch lever pivotally mounted between its ends between the said arm and base of said member, said lever having one arm formed with an under cam side extending from the pivot and adapted to be engaged under the depending portion of the keeper, a handle portion extending in the opposite direction from the pivot and another arm projecting from the handle portion a distance from the pivot and lying substantially at right angles to the first arm of the lever and likewise being formed with an inner cam side, substantially as and for the purposes described.

7. "In combination, a door and a casing therefor, a keeper attached to the casing, a latch lever pivotally mounted on the door between its ends, one end of the lever being formed into an operating handle and the other into a keeper engaging arm, a second arm projecting from the handle portion of the lever a short distance from its pivot and at an angle to the first arm, said keeper being formed at its outer sides for engagement with the respective arms when the lever is in horizontal and vertical positions, respectively, as the door is closed, to automatically operate the lever so that it will engage under the keeper when the door is entirely closed, substantially as described."

While appellee conceded that claims five and six were invalid in view of the prior art, we would have no hesitancy in so finding in the absence of this admission.

Whether the other claims are infringed depends entirely upon the position of the patent in suit in the art. No difficulty would be experienced in finding infringement if the patent were a pioneer or was one covering such an improvement as entitled it to a broad range of equivalency. But the patent does not occupy any such position. It is an extremely narrow one as a reading of the claims at once discloses. Moreover, the record shows a prior art loaded with latches possessing some of the features of appellee's latch.

Describing appellee's latch, counsel say:

"The latch is attached to the door of the refrigerator and the keeper for the latch is attached to the door jam. * * * The swinging latch of the patent in suit is an automatic latch acting to close and tightly close when the door is moved to shut it irrespective of the position the latch lever may have whether horizontal or level."

The prior art as disclosed by the Kiel patent No. 564,448, the Dent patent No. 67,506, and Charles patent No. 702,185, the Schrader patents No. 1,117,709 and 1,170,685, the War patent No. 1,250,736, all refute the contention of asserted novelty, in the location of the keeper upon the door jam and the lever upon the door or in providing for the automatic closing of the door without regard to the position of the lever. It may be true that in some of these disclosures because of the law of gravity the lever invariably takes but one position.

In the Dent patent the keeper was attached to the casing while the member carrying the latch lever was attached to the door. In the Charles latch the keeper was on the door while the other member was on the casing. The Keil latch had its keeper on the casing and the latch member on the door. Each structure, examples of which are in evidence, works automatically when the door is slammed shut whether the latch lever is in a horizontal or a vertical position.

It follows, therefore, that a patentable novelty, if any exists, is restricted to the particular structure disclosed. What, then, is the novel structure?

In nearly all of the cited prior art structures, the keeper member has a curved post against which a portion of the level strikes when the door is swung. Patentees (Claim 1) describe this portion of the keeper as "an outstanding post and a head at the outer portion of the post, said head depending below the post and formed with upper and lower outer sides coming substantially to a point." The keeper described in the Kiel patent is decidedly similar. The differences between appellees' lever latch and the prior art structures are more pronounced. Automatic operation is dependent upon the cooperation of the latch and the keeper. Consequently there naturally follow differences in the

structural design of one member due to difference in structure of the other member. We repeat then that patentable novelty resides in the structural differences of the latches (either in the keeper member or the latch member or in both), that the claims are narrow and their validity is conceded. Our operation of the physical exhibits discloses a basis for the concession of validity. But it is this narrow field and nothing more which the inventor possessed when he secured his patent.

As thus analyzed, limited, and explained, are the claims infringed by appellant's latch?

Appellant's structure has a keeper and a latch member located similarly to the appellees'. But it contends that both its keeper and its latch member differ from those of the patent. Its keeper does not have (so it says) "an outstanding post and a head at the outer portion of the post, said head depending below the post and formed with upper and lower curved outer sides coming substantially to a point" nor does its latch lever have one "arm formed with an under cam side extending from the pivot and adapted to be engaged under the depending portion of the keeper." It supplies its keeper with a lug on the inner or door side and its latch lever is supplied with an arm extending from the pivot of the latch member but such arm does not engage "the depending portion of the keeper. Rather is it so constructed and so angled as to come in contact with the lug on the head of the keeper. It is this contact between the lug and the arm on the latch which causes the latch to automatically swing and lock when the door is slammed. Appellant's keeper, though supplied with "a head formed with upper and lower curved outer sides coming substantially to a point" does not, as in the patent in suit, make use of the curved upper sides to direct the movement of the latch when the door is shut. If the arm on its lever extended a little further it would contact with the upper curved outer side portion of the head of the keeper.

The precise question then is, does appellant avoid infringement by placing a lug on the near side of the head of its keeper, the surface of which is curved similarly to the outer surface of its head and which is adapted to contact with the arm projecting from the handled portion of its lever?

Concede the existence of claims that are narrow and restricted to structural design only, yet even in suih claims there must be some range of equivalency.

Perhaps the expression "range of equivalency" is not a happy one nor does it describe the thought as accurately as it should. Instead, it would doubtless be better to say that a valid claim should rarely, if ever, have its language construed with absolute literacy. While a valid, narrow claim will be strictly construed, it by no means follows that its terms and expressions should be limited to a hard and fast, unbending definition. Rather must the language of each claim be defined in the light of the meaning given it by the patentee, with an appreciation of the purpose and object of the element in the patented structure. To illustrate. Patentee speaks of a keeper with its base, its post, and its head. The latter member is described as having "upper and lower curved outer sides coming substantially to a point." In our effort to ascertain whether infringement occurred, we must define the head as well as the "sides of the head." Is the outside of appellant's lug a part of the side of the head of the keeper? Certainly it is a part of the head and, in the light of the mechanics of the entire structure, the purpose it serves, we conclude that it is a part of the *side* of the head.

The decree is modified in so far as it sustains the validity of claims five and six of the patent in suit and enjoins the infringement of said claims five and six and to the extent that appellant is directed to account for its gains and profits due to the infringement of said claims five and six. Otherwise the decree is affirmed. The costs in this court shall be divided equally between the parties.

And on the same day, to wit: On the ninth day of February, 1928, the following further proceedings were had and entered of record, to wit:

Thursday, February 9, 1928.

Court met pursuant to adjournment and was opened by proclamation of crier.

Present: Hon. Samuel Alschuler, Circuit Judge, presiding; Hon. Evan A. Evans, Circuit Judge; Edward M. Holloway, Clerk; Palmer E. Anderson, Marshal.

Before Hon. Samuel Alschuler, Circuit Judge; Hon. Evan A. Evans, Circuit Judge; Hon. George T. Page, Circuit Judge

3935

SANITARY REFRIGERATOR COMPANY

vs.

ALEXANDER F. WINTERS and BASIL R. CRAMPTON

Appeal from the District Court of the United States for the Eastern District of Wisconsin

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Eastern District of Wisconsin and was argued by counsel.

On consideration whereof, It is now here ordered, adjudged and decreed by this court that the decree of the said District Court in this cause is modified in so far as it sustains the validity of claims 5 and 6 of the patent in suit and enjoins the infringement of said claims 5 and 6, and to the extent that appellant is directed to account for its gains and profits due to the infringement of said claims 5 and 6; otherwise the said decree be, and the same is hereby affirmed.

It is further ordered that the costs in this court shall be divided equally between the parties.

And afterwards, to wit: On the twenty-eighth day of February, 1928, there was filed in the office of the clerk of this court a Petition for a Rehearing, which said Petition for a Rehearing is not copied here.

And afterwards, to wit: On the sixth day of March, 1928, the following further proceedings were had and entered of record, to wit:

Tuesday, March 6, 1928.

Court met pursuant to adjournment and was opened by proclamation of crier.

Present: Hon. Samuel Alschuler, Circuit Judge, presiding; Hon. Evan A. Evans, Circuit Judge; Hon. George T. Page, Circuit Judge; Edward M. Holloway, Clerk; Palmer E. Anderson, Marshal.

3935

SANITARY REFRIGERATOR COMPANY

vs.

A. F. WINTERS and B. R. CRAMPTON

Appeal from the District Court of the United States for the Eastern District of Wisconsin

It is ordered by the court that the petition for a rehearing in this cause be, and the same is hereby denied.

And afterwards, to wit: On the eighth day of March, 1928, the following further proceedings were had and entered of record, to wit:

Thursday, March 8, 1928.

Court met pursuant to adjournment.

Present: Hon. George T. Page, Circuit Judge; Edward M. Holloway, Clerk; Palmer E. Anderson, Marshal.

3935

SANITARY REFRIGERATOR COMPANY

vs.

ALEXANDER F. WINTERS et al.

Appeal from the District Court of the United States for the Eastern District of Wisconsin

On motion of counsel for appellant, it is now here ordered that the mandate of this court heretofore issued in this cause, be and the same is hereby recalled and stayed until the further order of this court.

UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

I, Edward M. Holloway, Clerk of the United States Circuit Court of Appeals for the Seventh Circuit, do hereby certify that the foregoing typewritten pages, numbered from 1 to 10, inclusive, contain a true copy of the proceedings had and papers filed (except the briefs of counsel and the petition for a rehearing) in the case of Sanitary Refrigerator Company, appellant, vs. Alexander F. Winters and Basil R. Crampton, appellees, No. 3935, October Term, 1927, as the same remains upon the files and records of the United States Circuit Court of Appeals, for the Seventh Circuit.

In testimony whereof I hereunto subscribe my name and affix the seal of said United States Circuit Court of Appeals for the Seventh Circuit, at the City of Chicago, this Twelfth day of March, A. D. 1928.

Edward M. Holloway, Clerk of the United States Circuit Court of Appeals for the Seventh Circuit. (Seal United States Circuit Court of Appeals, Seventh Circuit.)

[fol. 185] SUPREME COURT OF THE UNITED STATES

ORDER REVOKING ORDER DENYING CERTIORARI—Oct. 15, 1928

On consideration of the petition for rehearing filed herein,

It is now here ordered by this Court that the said petition be, and the same is hereby, granted. The order entered October 8, 1928, denying the petition for a writ of certiorari herein is revoked, and a writ of certiorari in this cause is granted.

[fol. 186] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed October 15, 1928

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Seventh Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

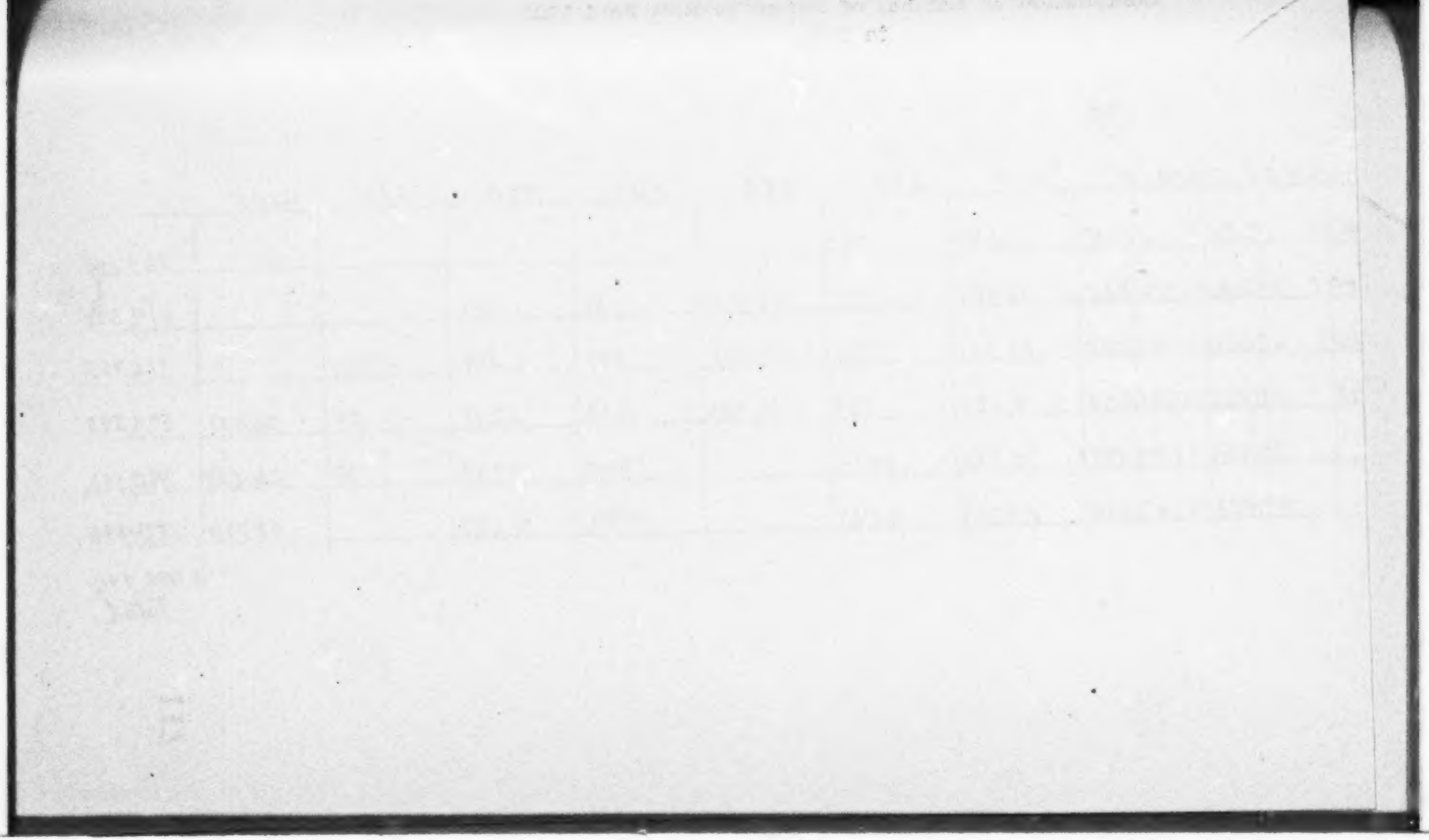
Endorsed on cover: File No. 33,429. U. S. Circuit Court of Appeals, 7th Circuit. Term No. 128. Sanitary Refrigerator Co., Petitioner, vs. Alexander F. Winters and Basil R. Crampton. Petition for writ of certiorari and exhibit thereto. Filed May 8th, 1928. File No. 33,429.

FOLD OUT IS TOO LARGE TO BE FILMED

PLAINTIFF'S EXHIBIT H.

Latches of Patent in Suit Sold 1921 to 1926.

	375	387	500	720	385	395	
40	740						169,745
85	1,744	42,912	151	114			319,348
17	288	41,398	404	574	324		366,985
36	764	12,724	613	2,218	24	34,037	474,593
16	1,313		505	2,493	30	66,055	390,182
54	4,585		479	2,223		48,770	374,898
							2,095,746 Total



DEFENDANT'S EXHIBIT No. 2.

U. S. Patent No. 670,506 to H. H. Dent.

506.

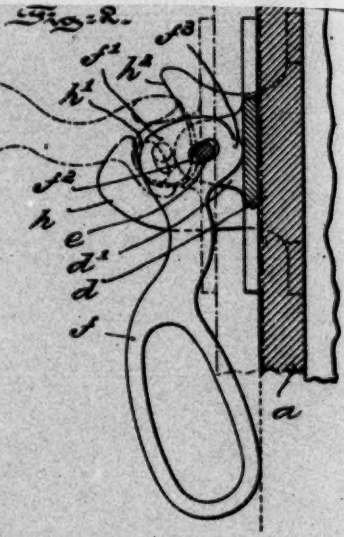
Patented Mar. 26, 1901.

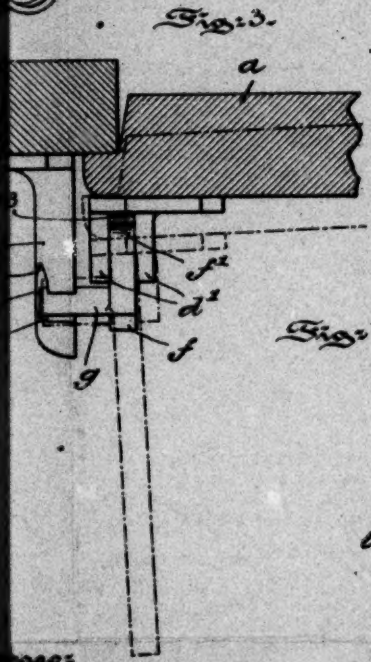
H. H. DENT

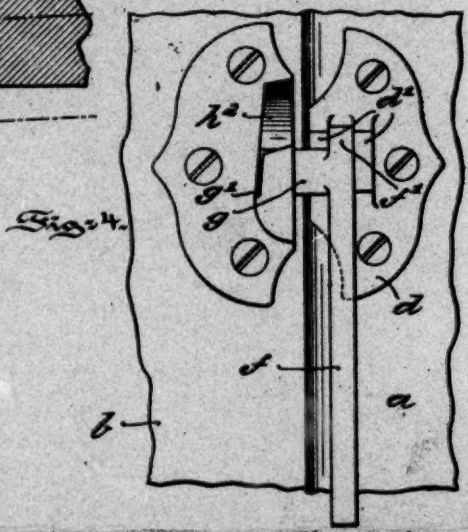
LATCH.

FOLD OUT IS TOO LARGE TO BE FILMED









Witnesses:

Inventor:
Henry H. Dent,

UNITED STATES PATENT OFF

HENRY H. DENT, OF ALLENTOWN, PENNSYLVANIA, ASSIGNO
DENT HARDWARE COMPANY, OF FULLERTON, PENNSYLV

LATCH.

SPECIFICATION forming part of Letters Patent No. 670,506, dated March 2
Application filed November 28, 1900. Serial No. 37,078. (No model.)

To all whom it may concern:

Be it known that I, HENRY H. DENT, a citizen of the United States, residing at Allentown, in the county of Lehigh and State of Pennsylvania, have invented certain new and useful Improvements in Latches, of which the following is a specification.

My invention has relation to that class of door closers and openers wherein a pivoted lever or latch is provided with a lug or stud adapted to engage in a keeper to force the door tightly shut when operated in one direction and to start the door open when moved in the opposite direction, and in such connection it relates to the construction of the lever or latch its fulcral support, and the keeper for the latch.

The principal objects of my invention are, first, to so pivot the lever or latch in the plate or seat supporting the same that in the act of clamping the door to its seat strain upon the pin or bolt forming the pivot or fulcrum is removed, and, second, to so fashion the keeper that in the opening of the door and before disengagement of the latch from the keeper the door is pried open by the movement of the latch within the keeper.

The nature and scope of my invention will be more fully understood from the following description, taken in connection with the accompanying drawings, forming part hereof, in which—

Figure 1 is a perspective view of a latch and its keeper embodying main features of my invention, the same being disengaged from the door and the door jamb or seat. Fig. 2 is a vertical sectional view of the latch and adjacent parts, showing in full and dotted lines the operative and inoperative positions of the lever-fastener of my invention for refrigerator and other doors. Fig. 3 is a top or plan view of the latch and keeper, with the door and jamb illustrated in cross-section; and Fig. 4 is a front elevational view of Fig. 3.

Referring to the drawings, *a* represents the lever *f* has a cam or eccentric
tween studs *d'* and provided with
arranged slot f^2, through which
e passes to unite the lever or
plate *d*. On the inner face of
f' is formed an auxiliary cam *f*
the latch or lever *f* is pressed
press inwardly against the base
d, as illustrated in Fig. 2. Up
portion or face of the cam *f'* is
erally-projecting lug *g*, adapted
recess *g'* of the keeper *h*. The
provided with two oppositely-arr
h' and h^3, of which one, *h'*, is conc
the seat for the lug *g* and the ot
wardly and forwardly made to
in the path of the lug *g* when th
vated out of the seat in the wing
illustrated in dotted lines in Fig.
ings.

The operation of the device
When the door is pushed shut,
depressed to force the lug *g* int
of the wing *h'*. When now the le
further depressed, the cam *f'* of
is forced inward by the weight *h'* o
and by reason of the slotted con
the pin or bolt *e* is permitted to
upon the plate *d* of the door *a*.
thus be tightly jammed into its
strain upon the pivot *e* of the lat
the door *a* is to be opened, the latch
upward until the lug *g* strikes up
h^3, when the door will be initia
forced open by the impingement
upon the said wing. By pulling
lever *f* the door will then come
and without any oblique pressur
door while in its seat.

Having thus described the nat
jects of my invention, what I cla
and desire to secure by Letters Pa

1. A lever or latch provided w
ally-projecting lug and a cam on it
vided with a slot, a keeper, wher

upport for the lever in said plate, all so that when the lug engages the nd the cam bears against the plate, n upon the pivot is relieved, substan- and for the purposes described.

a fastening device of the character d, a plate provided with two project- s, a lever provided with a cam or body between said studs and bearing upon te, said body being slotted, and a pin through the studs and the slot of said body to form the fulcral support for the lever in the studs, substantially as and for the purposes described.

In testimony whereof I have hereunto set my signature in the presence of two subscribing witnesses.

HENRY B. DENT.

Witnesses:
CHAS. E. SHECKLER,
ALEX. N. ULRICH.

DEFENDANT'S EXHIBIT No. 4.

U. S. Patent No. 554,448 to H. F. Keil.

(No Model.)

H. F. KEIL.

LATCH.

No. 554,448. Patented Feb. 11, 1896.

Fig. 1.

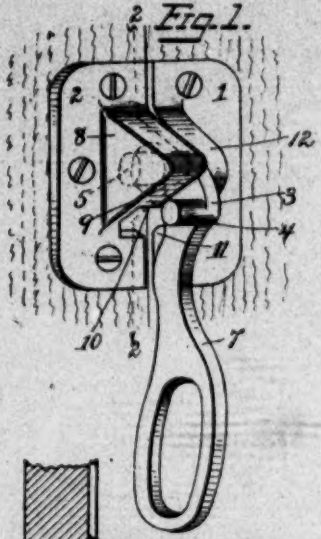


Fig. 6.



Fig. 5.

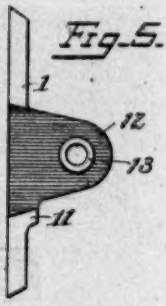


Fig. 2.

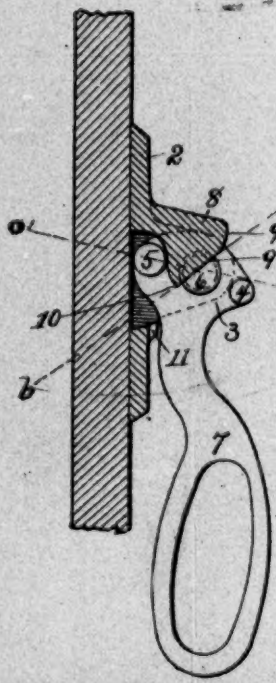


Fig. 3.

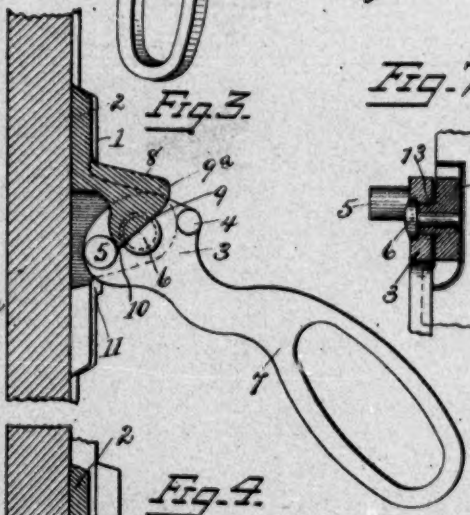


Fig. 7.

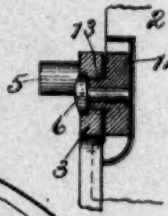
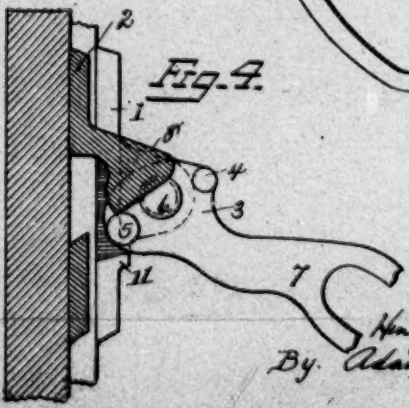


Fig. 4.



WITNESSES.

Albert Popking.

Henry C. Dieterich

INVENTOR.

Henry F. Keil

By Adam b. Schatz

Attorney

UNITED STATES PAT

HENRY FRANCIS KEIL, OF NEW

LATCH.

SPECIFICATION forming part of Letters Patent No. 55

Application filed November 15, 1895. Serial No. 6

To all whom it may concern:

Be it known that I, HENRY FRANCIS KEIL, a citizen of the United States of America, and a resident of New York city, in the county and State of New York, have invented a new and useful Improvement in Door Closing and Opening Devices, of which the following is a specification.

This invention relates to that class of door clamps and openers in which a lever having suitable studs to engage a keeper is utilized to force a door tightly to its seat when moved in one direction and to start or "pry" the door open when moved in the other direction, this type of invention being particularly adapted for refrigerator or other doors which require an absolutely-tight closure.

The object of my invention is to produce a simple device of the type mentioned, one which is certain in operation, of small cost, and which will both clamp and start the door in a direct horizontal plane without tendency to move the door in any direction other than that for which its hinges provide.

To this end my invention consists in the construction and combination of parts, substantially as hereinafter described and claimed.

In the accompanying drawings, Figure 1 is a perspective view of the complete device as applied to a door and door-casing. Fig. 2 is a vertical section in the plane of line 2 2 of Fig. 1, the parts being shown in the position when the door is locked. Fig. 3 is a similar view when the door is about to be clamped shut, the parts having also very nearly this position when the door is to be started from its seat. Fig. 4 is a similar view when the door has been entirely released from its clamped position and is ready to be swung open on its hinges. Fig. 5 is a detail view of the plate and lug for supporting the pivot of the handle-lever. Fig. 6 is a detail view of the head of the lever carrying the pins or studs. Fig. 7 is a section through the upper end of the lever and its support.

The plate 1, adapted to be attached to the door, is provided with a stud 12, having a cylindrical bearing 13 for the head 3 of the le

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will be under
continued to
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In Fig. 2 the
how far I pref

LATCH.

Patented Feb. 11, 1896.

Fig. 1.



Fig. 5.

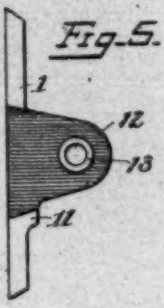


Fig. 7.

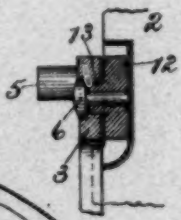


Fig. 3.

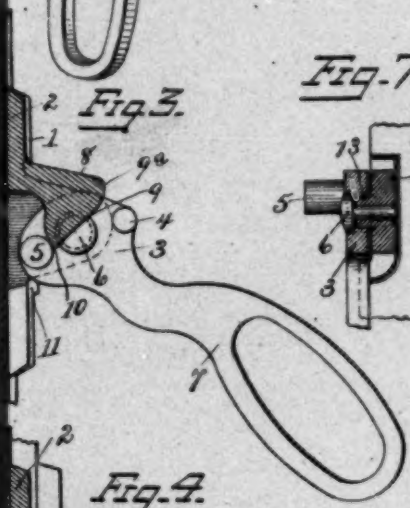
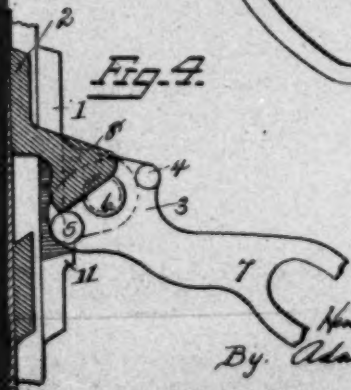


Fig. 4.



INVENTOR.

Henry F. Keil

By Adam C. Schatz

Attorney

UNITED STATES PATENT OFFICE.

HENRY FRANCIS KEIL, OF NEW YORK, N. Y.

LATCH.

SPECIFICATION forming part of Letters Patent No. 554,445, dated February 11, 1896.

Application filed November 15, 1895. Serial No. 569,052. (No model.)

To all whom it may concern:

Be it known that I, HENRY FRANCIS KEIL, a citizen of the United States of America, and a resident of New York city, in the county and State of New York, have invented a new and useful Improvement in Door Closing and Opening Devices, of which the following is a specification.

This invention relates to that class of door clamps and openers in which a lever having suitable studs to engage a keeper is utilized to force a door tightly to its seat when moved in one direction and to start or "pry" the door open when moved in the other direction, this type of invention being particularly adapted for refrigerator or other doors which require an absolutely-tight closure.

The object of my invention is to produce a simple device of the type mentioned, one which is certain in operation, of small cost, and which will both clamp and start the door in a direct horizontal plane without tendency to move the door in any direction other than that for which its hinges provide.

To this end my invention consists in the construction and combination of parts, substantially as hereinafter described and claimed.

In the accompanying drawings, Figure 1 is a perspective view of the complete device as applied to a door and door-casing. Fig. 2 is a vertical section in the plane of line 2 2 of Fig. 1, the parts being shown in the position when the door is locked. Fig. 3 is a similar view when the door is about to be clamped shut, the parts having also very nearly this position when the door is to be started from its seat. Fig. 4 is a similar view when the door has been entirely released from its clamped position and is ready to be swung open on its hinges. Fig. 5 is a detail view of the plate and lug for supporting the pivot of the handle-lever. Fig. 6 is a detail view of the head of the lever carrying the pins or studs. Fig. 7 is a section through the upper end of the lever and its support.

The plate 1, adapted to be attached to the door, is provided with a stud 12, having a cylindrical bearing 13 for the head 3 of the lever 7, which is pivoted on said bearing and held thereon by a rivet or bolt 6, said lever having two studs or pins 4 and 5 projecting from the pivotal point and parallel with the axis of the pivot and nearly diametrically opposite each other, the pin 5 being preferably larger than the pin 4.

The plate 2, which is adapted to be attached to the door-casing, is provided with a nosing or keeper 8 having its under face inclined, as at 9, the outer end of this incline terminating in a substantially perpendicular face at the tip 9^a. The keeper 8 at its base back of the incline 9 is undercut to form a recess for the reception of the lever-pin 5, the edge wall of this recess being preferably cam-shaped, as at 10. By "cam-shaped" I mean that the wall 10 of the recess is not concentric with the center of the pivot-pin 6 when the door is shut or nearly so.

At 11 is indicated a shoulder or stop to limit the inward movement of the lever 7, as shown most clearly in Fig. 2.

In operation, when the door is pushed inward the pin 5 rides down the incline 9 of the keeper, as indicated in Fig. 4, and automatically lifts the handle end of the lever and finally assumes about the position shown in Fig. 3. A downward and inward push on said handle causes the pin 5 to ride up over the cam 10 to the position shown in Fig. 2, and thus firmly clamps the door in its casing. When the door is to be opened, an outward pull of the handle first carries the parts back to a position where the pin 4 will engage the lower part of the substantially perpendicular face 9^a, the pin 5 being at the same time carried down below the cam 10. Further movement in this direction carries the pin 4 up over and to a slight degree along the face 9^a, and thus forces or "pries" the door outward from its seat in a direct horizontal plane. It will be understood that if the incline 9 were continued to the tip of the keeper the pin 4 would strike said incline, and the movement of the lever in an outward direction would tend to force the door downward and jam it against the sill of the casing.

In Fig. 2 the line $a\ a$ is drawn to indicate how far I prefer to locate the pin 4 below the line of the centers of pivot 6 and pin 5, and I will now explain the reason for this location. In the first place the plane of movement of pivot 6 should be such as to intersect the in-

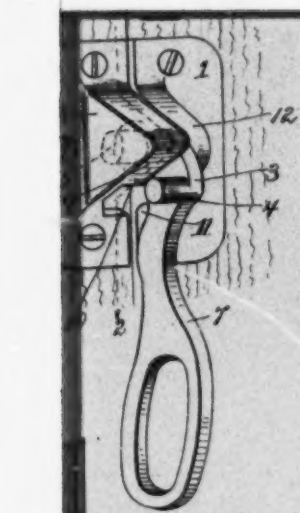


Fig. 5.

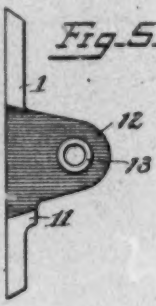


Fig. 7.

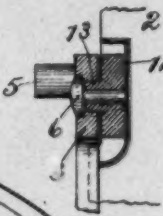


Fig. 3.

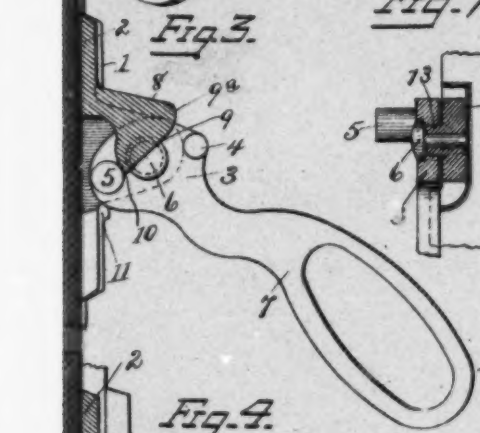
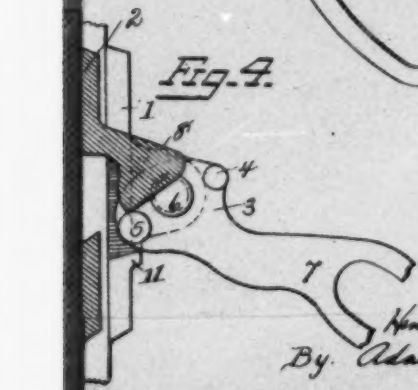


Fig. 4.



INVENTOR.
Henry F. Keil
By Adam B. Schatz
Attorney

HENRY FRANCIS KEIL, OF NEW YORK, N. Y.

LATCH.

SPECIFICATION forming part of Letters Patent No. 554,448, dated February 11, 1896.

Application filed November 15, 1895. Serial No. 569,052. (No model.)

To all whom it may concern:

Be it known that I, HENRY FRANCIS KEIL, a citizen of the United States of America, and a resident of New York city, in the county and State of New York, have invented a new and useful Improvement in Door Closing and Opening Devices, of which the following is a specification.

This invention relates to that class of door clamps and openers in which a lever having suitable studs to engage a keeper is utilized to force a door tightly to its seat when moved in one direction and to start or "pry" the door open when moved in the other direction, this type of invention being particularly adapted for refrigerator or other doors which require an absolutely-tight closure.

The object of my invention is to produce a simple device of the type mentioned, one which is certain in operation, of small cost, and which will both clamp and start the door in a direct horizontal plane without tendency to move the door in any direction other than that for which its hinges provide.

To this end my invention consists in the construction and combination of parts, substantially as hereinafter described and claimed.

In the accompanying drawings, Figure 1 is a perspective view of the complete device as applied to a door and door-casing. Fig. 2 is a vertical section in the plane of line 2 2 of Fig. 1, the parts being shown in the position when the door is locked. Fig. 3 is a similar view when the door is about to be clamped shut, the parts having also very nearly this position when the door is to be started from its seat. Fig. 4 is a similar view when the door has been entirely released from its clamped position and is ready to be swung open on its hinges. Fig. 5 is a detail view of the plate and lug for supporting the pivot of the handle-lever. Fig. 6 is a detail view of the head of the lever carrying the pins or studs. Fig. 7 is a section through the upper end of the lever and its support.

The plate 1, adapted to be attached to the door, is provided with a stud 12, having a cylindrical bearing 13 for the head 3 of the lever 7, which is pivoted on said bearing and held thereon by a rivet or bolt 6, said lever having two studs or pins 4 and 5 projecting laterally from the head 3 on opposite sides of the pivotal point and parallel with the axis of the pivot and nearly diametrically opposite each other, the pin 5 being preferably larger than the pin 4.

The plate 2, which is adapted to be attached to the door-casing, is provided with a nosing or keeper 8 having its under face inclined, as at 9, the outer end of this incline terminating in a substantially perpendicular face at the tip 9^a. The keeper 8 at its base back of the incline 9 is undercut to form a recess for the reception of the lever-pin 5, the edge wall of this recess being preferably cam-shaped, as at 10. By "cam-shaped" I mean that the wall 10 of the recess is not concentric with the center of the pivot-pin 6 when the door is shut or nearly so.

At 11 is indicated a shoulder or stop to limit the inward movement of the lever 7, as shown most clearly in Fig. 2.

In operation, when the door is pushed inward the pin 5 rides down the incline 9 of the keeper, as indicated in Fig. 4, and automatically lifts the handle end of the lever and finally assumes about the position shown in Fig. 3. A downward and inward push on said handle causes the pin 5 to ride up over the cam 10 to the position shown in Fig. 2, and thus firmly clamps the door in its casing. When the door is to be opened, an outward pull of the handle first carries the parts back to a position where the pin 4 will engage the lower part of the substantially perpendicular face 9^a, the pin 5 being at the same time carried down below the cam 10. Further movement in this direction carries the pin 4 up over and to a slight degree along the face 9^a, and thus forces or "pries" the door outward from its seat in a direct horizontal plane. It will be understood that if the incline 9 were continued to the tip of the keeper the pin 4 would strike said incline, and the movement of the lever in an outward direction would tend to force the door downward and jam it against the sill of the casing.

In Fig. 2 the line *a a* is drawn to indicate how far I prefer to locate the pin 4 below the line of the centers of pivot 6 and pin 5, and I will now explain the reason for this location. In the first place the plane of movement of pivot 6 should be such as to intersect the incline 9 of the keeper at a point about or a little

below the center of that incline, in order that when the door is being closed the pin 5 will ride down the incline and then start up behind the keeper, and the angle of the incline should be about as shown by the line *b b* in Fig. 2, in order that the lever may automatically operate as just described. Now if the center of pin 4 was located on the line *c c* the said pin would strike the incline, when opening the door, before the pin 5 had passed down far enough to clear the lower end of the cam 10. Therefore the said pin 4 is located below the line *c c*, substantially as shown and described.

Having now described my invention, what I claim is—

In a door-latch, the combination of a keeper or hook having a substantially perpendicular face and inclining downwardly and rearwardly therefrom and provided with a recess back of said inclined portion, and a lever having a head provided with a stud 5 for engaging under the keeper in the recess thereof and a stud 4 for impinging on the said perpendicular face of the keeper, whereby the door is drawn outward directly in a line at right angles to its face and thereby prevent crowding of the door against the upper or lower part of the door-frame, said studs being parallel with the axis of the pivot of the lever.

In testimony that I claim the foregoing as my invention I have signed my name, in presence of two witnesses, this 30th day of October, 1895.

HENRY FRANCIS KEIL.

Witnesses:
JOHN WERNER.
JAS. KATSCHE.

DEFENDANT'S EXHIBIT No. 5.

U. S. Patent No. 1,114,296 to T. O. Schrader.

T. O. SCHRADER.

LOCKING DOOR PULL.

APPLICATION FILED JULY 3, 1914.

1,114,296.

Patented Oct. 20, 1914

FIG. 1.

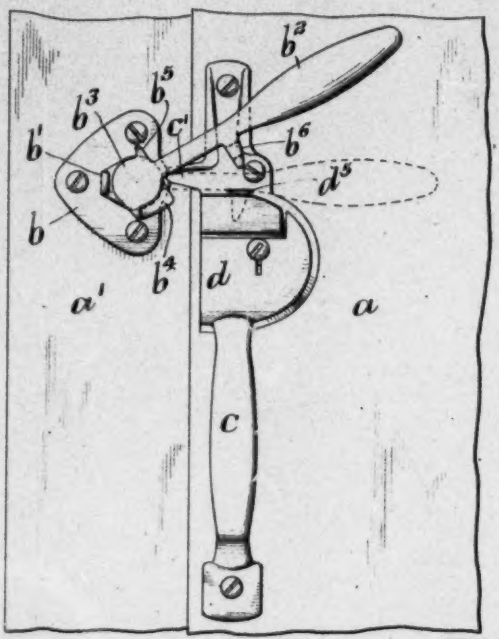


FIG. 2.

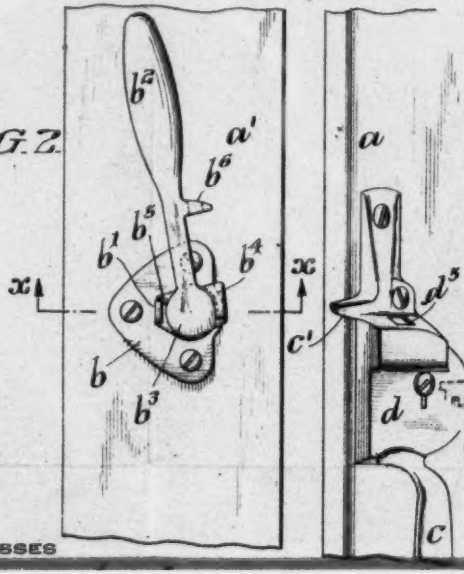


FIG. 3.

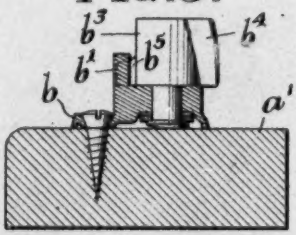
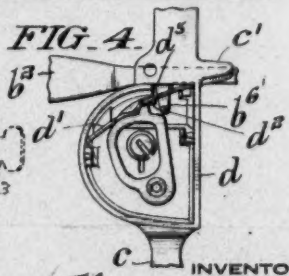


FIG. 4.



INVENTOR

Thomas O. Schrader

WITNESSES

UNITED STATES PATEN

THOMAS O. SCHRADER, OF ALLENTOWN, PENNSYLVANIA, HARDWARE COMPANY, OF FULLERTON, PENNSYLVA PENNSYLVANIA.

LOCKING DOOR-PULL.

1,114,296. Specification of Letters Patent.

Application filed July 3, 1914. Serial No. 848,

To all whom it may concern:

Be it known that I, THOMAS O. SCHRADER, a citizen of the United States, residing at Allentown, in the county of Lehigh and State of Pennsylvania, have invented certain new and useful Improvements in Locking Door-Pulls, of which the following is a specification.

My invention relates to a lever handle and lock door-pull, for refrigerator and other doors arranged so that slamming the door causes the lever-handle to be operated to hold the door closed and at the same time permit by such act of the lever-handle being brought into such a position to permit manually then of the said handle being brought into connection with the lock of said door-pull to secure the door against opening until unlocked; and in such connection my invention relates to the constructive arrangement of the said defined device for the purpose explained.

The nature and scope of my present invention will be more fully understood from the following description taken in connection with the accompanying drawings forming part hereof, in which—

Figure 1, is a front elevational view of the lever-handle and lock door-pull for refrigerator and other doors embodying the essential main features of my said invention, showing the door in a closed position and the lever-handle in such position as to permit manually of engaging the lever-handle tongue with the lock member of the door-pull. Fig. 2, is a similar view of the side-frame of the door, showing the lever pivoted to a bracket removably applied to said frame and with a back-stop and with the hub of the lever-handle formed with an inclined cam and with a projection to engage the back-stop of the bracket to limit the range of movement in one direction of said lever-handle and the said lever-handle in one portion provided with a notched or re- projection to engage the lock of the secured to the Figs. 1 and 2. T vided in one part bracket has pivo handle b^2, provi formed as part o beyond the cam b arranged a proje b^1, of the bracket rection the rotary ver-handle b^2. T side is provided projection b^3, to door-pull c. The secured to the do integral part of t pull c, in the upp projection c^1, to en of the lever-handl slammed to and example, so as to illustrated in Fig. manually the notch b^4, of the lever-han the lock d, for exam 4, for then turning as illustrated in F leaf-spring d^1, be tongue d^2, so that has been permitted turning of the key will be maintained with the said keep

To operate the le the position to the may be caused to shown in Fig. 1, it the door. Then by movement downwar notched projection enter the aperture then in a position to trolled keeper-tongu gage the notched pro d^2, is turned in the secure the door pul

APPLICATION FILED JULY 3, 1914.

1,114,296.

Patented Oct. 20, 1914

FIG. 1.

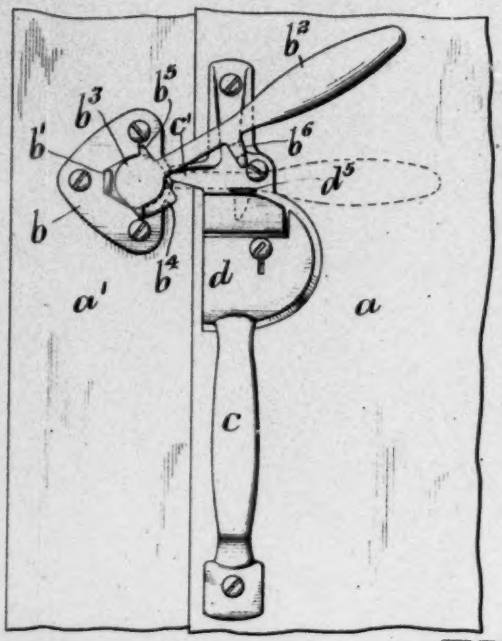
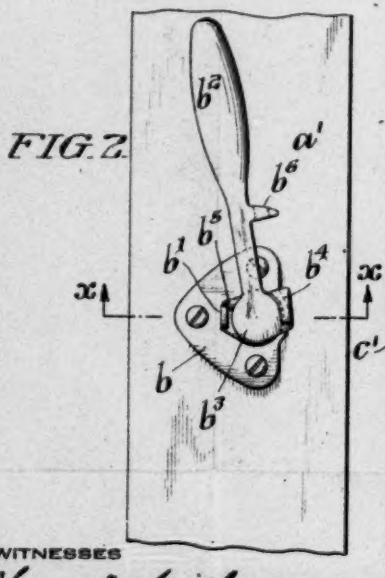


FIG. 2.



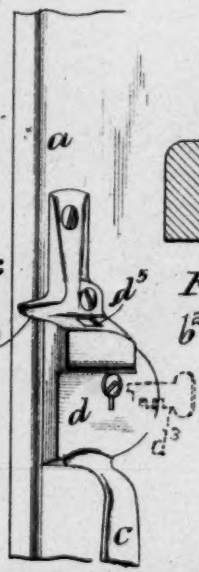


FIG. 3.

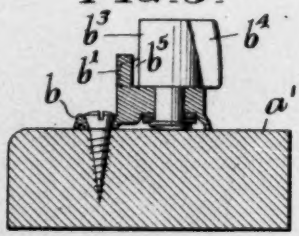
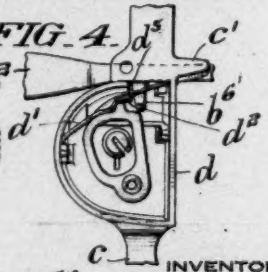


FIG. 4.



WITNESSES

Thomas M. Smith,

Rose E. Smith

INVENTOR

Thomas O. Schrader,

BY Walter Douglas

ATTORNEY

UNITED STATES PATENT

THOMAS O. SCHRADER, OF ALLENTOWN, PENNSYLVANIA, ASSIGNOR TO HARDWARE COMPANY, OF FULLERTON, PENNSYLVANIA, A CORPORATION OF PENNSYLVANIA.

LOCKING DOOR-PULL.

1,114,296. Specification of Letters Patent. Patented Oct. 20, 1914.

Application filed July 3, 1914. Serial No. 848,7

To all whom it may concern:

Be it known that I, THOMAS O. SCHRADER, a citizen of the United States, residing at Allentown, in the county of Lehigh and State of Pennsylvania, have invented certain new and useful Improvements in Locking Door-Pulls, of which the following is a specification.

My invention relates to a lever handle and lock door-pull, for refrigerator and other doors arranged so that slamming the door causes the lever-handle to be operated to hold the door closed and at the same time permit by such act of the lever-handle being brought into such a position to permit manually then of the said handle being brought into connection with the lock of said door-pull to secure the door against opening until unlocked; and in such connection my invention relates to the constructive arrangement of the said defined device for the purpose explained.

The nature and scope of my present invention will be more fully understood from the following description taken in connection with the accompanying drawings forming part hereof, in which—

Figure 1, is a front elevational view of the lever-handle and lock door-pull for refrigerator and other doors embodying the essential main features of my said invention, showing the door in a closed position and the lever-handle in such position as to permit manually of engaging the lever-handle tongue with the lock member of the door-pull. Fig. 2, is a similar view of the side-frame of the door, showing the lever pivoted to a bracket removably applied to said frame and with a back-stop and with the hub of the lever-handle formed with an inclined cam and with a projection to engage the back-stop of the bracket to limit the range of movement in one direction of said lever-handle and the said lever-handle in one portion provided with a notched or recessed projection to engage the lock of the said door-pull. Fig. 3, is a transverse sectional view on the line x—x, of Fig. 2; and Fig. 4, is a central longitudinal sectional view through the lock of the door-pull, to the right, as shown in Fig. 2.

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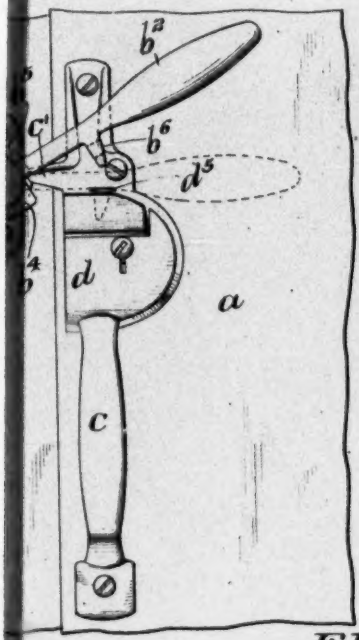
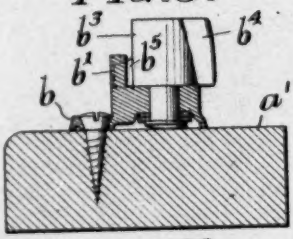


FIG. 3.



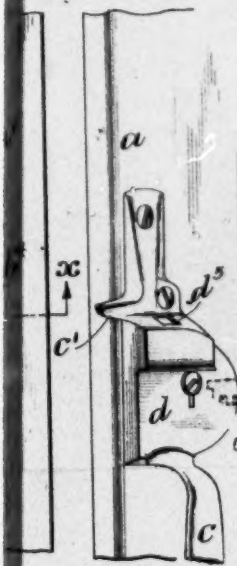
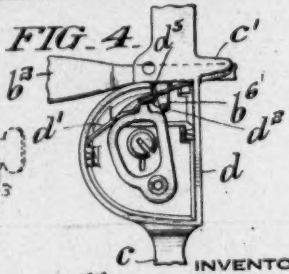


FIG. 4.



INVENTOR
Thomas O. Selander,
BY Walter Douglas
ATTORNEY

HARDWARE COMPANY, OF FULLERTON, PENNSYLVANIA, A CORPORATION OF PENNSYLVANIA.

LOCKING DOOR-PULL.

1,114,296. Specification of Letters Patent. Patented Oct. 20, 1914.

Application filed July 3, 1914. Serial No. 848,761.

To all whom it may concern:

Be it known that I, THOMAS O. SCHRADER, a citizen of the United States, residing at Allentown, in the county of Lehigh and State of Pennsylvania, have invented certain new and useful Improvements in Locking Door-Pulls, of which the following is a specification.

My invention relates to a lever handle and lock door-pull, for refrigerator and other doors arranged so that slamming the door causes the lever-handle to be operated to hold the door closed and at the same time permit by such act of the lever-handle being brought into such a position to permit manually then of the said handle being brought into connection with the lock of said door-pull to secure the door against opening until unlocked; and in such connection my invention relates to the constructive arrangement of the said defined device for the purpose explained.

The nature and scope of my present invention will be more fully understood from the following description taken in connection with the accompanying drawings forming part hereof, in which—

Figure 1, is a front elevational view of the lever-handle and lock door-pull for refrigerator and other doors embodying the essential main features of my said invention, showing the door in a closed position and the lever-handle in such position as to permit manually of engaging the lever-handle tongue with the lock member of the door-pull. Fig. 2, is a similar view of the side-frame of the door, showing the lever pivoted to a bracket removably applied to said frame and with a back-stop and with the hub of the lever-handle formed with an inclined cam and with a projection to engage the back-stop of the bracket to limit the range of movement in one direction of said lever-handle and the said lever-handle in one portion provided with a notched or recessed projection to engage the lock of the said door-pull. Fig. 3, is a transverse sectional view on the line x—x, of Fig. 2; and Fig. 4, is a central longitudinal sectional view through the lock of the door-pull, to the right, as shown in Fig. 2.

Referring to the drawings a, is the door and a^1, is the frame against which the door is closed, as clearly illustrated in Fig. 1. A bracket b, is provided which is removably secured to the frame a^1, as illustrated in Figs. 1 and 2. The said bracket is also provided in one part with a projection b^1. This bracket has pivoted to it an angular lever-handle b^2, provided with a hub b^3, and formed as part of the hub is a cam b^4, and beyond the cam b^4, and as part of the hub is arranged a projection b^5, to engage the stop b^1, of the bracket b, so as to limit in one direction the rotary movement of the said lever-handle b^2. The lever-handle b^2, on one side is provided with a notched or recessed projection b^6, to engage the lock d, of the door-pull c. The door-pull c, is removably secured to the door a, and is formed as an integral part of the said lock d. The door-pull c, in the upper portion has a tapered projection c^1, to engage and ride the cam b^4, of the lever-handle b^2, when the door a, is slammed to and against the frame a^1, for example, so as to occupy the position as illustrated in Fig. 1, and in order that then manually the notched or recessed projection b^6, of the lever-handle b^2, may be forced into the lock d, for example, as illustrated in Fig. 4, for then turning the key d^3. The lock d, as illustrated in Fig. 4, is provided with a leaf-spring d^1, bearing against a keeper-tongue d^2, so that when the projection b^6, has been permitted to enter the lock d, by turning of the key d^3, the said projection will be maintained in locking engagement with the said keeper-tongue.

To operate the lever-handle b^2, occupying the position to the left in Fig. 2, so that it may be caused to assume the position as shown in Fig. 1, it is only necessary to slam the door. Then by a slight further manual movement downward of the lever-handle the notched projection b^6, will be permitted to enter the aperture d^5, of the lock d, and be then in a position to permit the spring controlled keeper-tongue d^2, of the lock to engage the notched projection b^6, when the key d^3, is turned in the lock d, so as thereby to secure the door pull against opening of the door.

Having thus described the nature and objects of my invention, what I claim as new and desire to secure by Letters Patent is:—

1. A device of the character described, comprising a lever-handle having a projection and a hub with a cam as part of the same, a door-pull having a tongue and a lock, said projection adapted to enter said

lock and said tongue adapted to engage said cam, substantially as and for the purposes described.

2. A device of the character described, comprising a lever-handle mounted in a bracket having a stop and a projection, a hub having an inclined cam and a back-stop and a door-pull with a tapered tongue and a lock, said projection adapted to enter said lock and said tongue adapted to engage said cam, substantially as and for the purposes described.

In witness whereof, I have hereunto set my signature in the presence of the two subscribing witnesses.

THOMAS O. SCHRADER.

Witnesses:
MABEL G. DAVIS,
CLARA SCHAADT.

DEFENDANT'S EXHIBIT No. 6.

U. S. Patent No. 1,117,709 to T. O. Schrader.

T. O. SCHRADER.

LATCH FOR DOORS.

APPLICATION FILED AUG. 8, 1914.

1,117,709.

Patented Nov. 17, 1914.

2 SHEETS—SHEET 1.

FIG. 1.

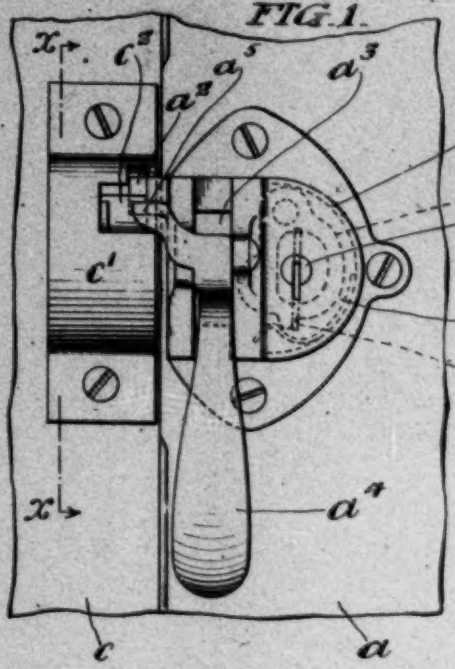


FIG. 2.

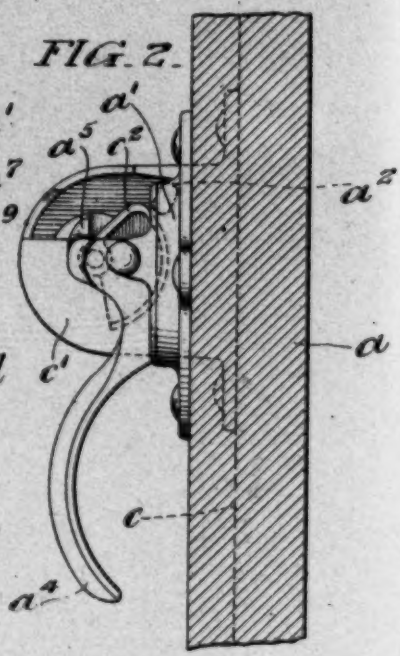
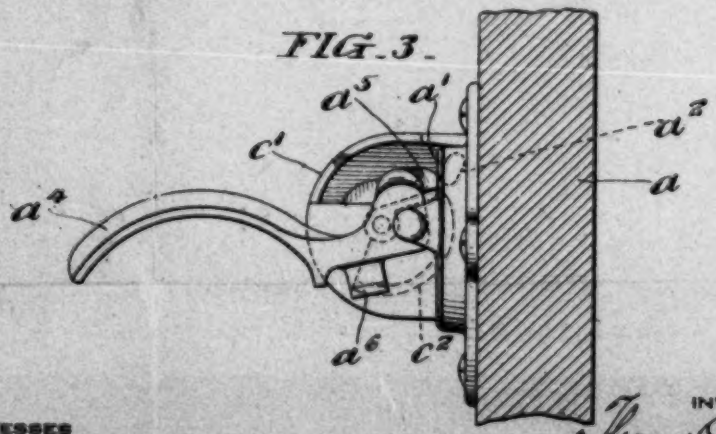


FIG. 3.



WITNESSES

Thomas M. Smith

Rosa E. Smith

INVENTOR

Thos. O. Schrader,

BY

L. Walter Douglas



T. O. SCHRADER.

LATCH FOR DOORS.

APPLICATION FILED AUG. 8, 1914.

1,117,709.

Patented Nov. 17, 1914.

2 SHEETS—SHEET 2.

FIG. 4.

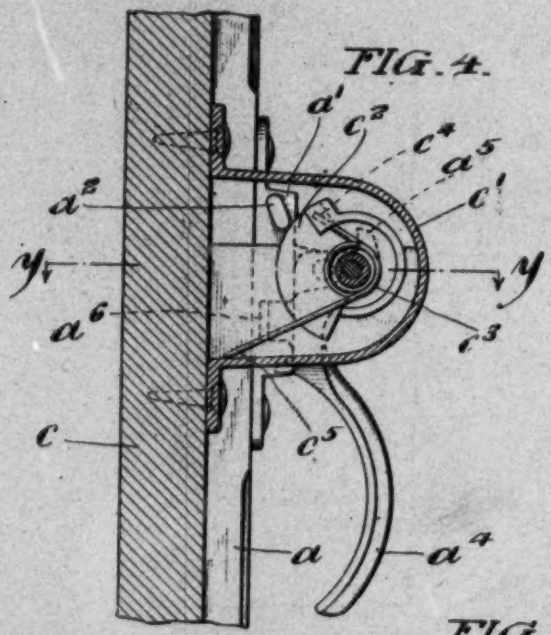


FIG. 5.

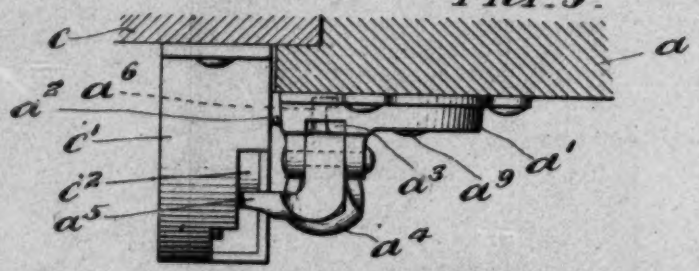
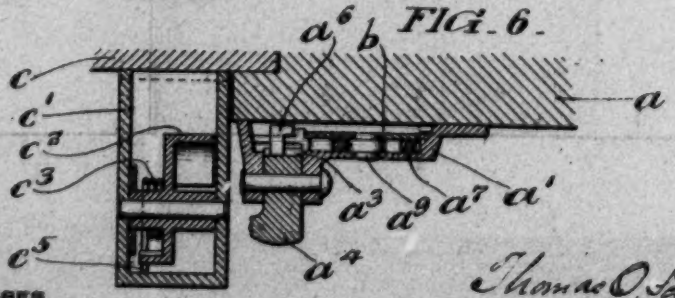


FIG. 6.



WITNESSES

Thomas M. Smith

INVENTOR

Thomas O. Schrader,

BY

Miller & Sprague

UNITED S

THOMAS O. SCHRADER, OF
HARDWARE COMPANY
PENNSYLVANIA.

1,117,709.

Appli

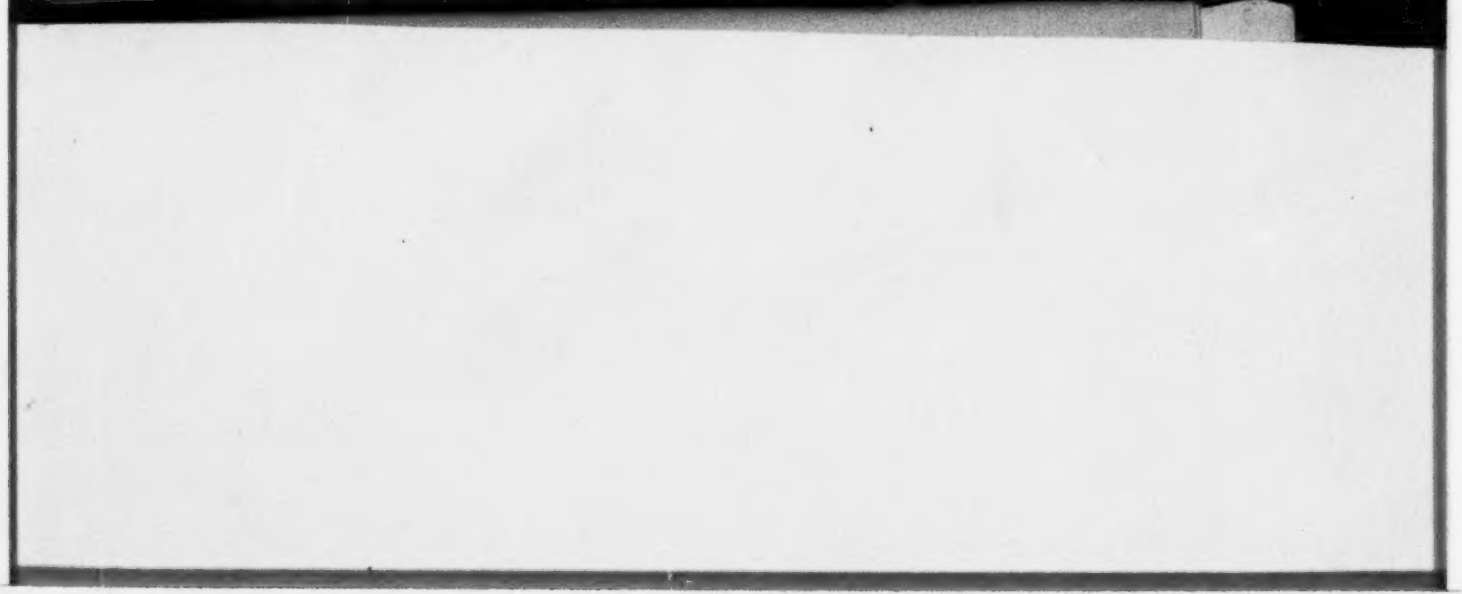
To all whom it may concern:

Be it known that I, THOM
a citizen of the United St
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Latches for Doors, of whi
is a specification.

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UNITED STATES PATENT OFFICE.

THOMAS O. SCHRADER, OF ALLENTOWN, PENNSYLVANIA, ASSIGNOR TO THE DENT HARDWARE COMPANY, OF FULLERTON, PENNSYLVANIA, A CORPORATION OF PENNSYLVANIA.

LATCH FOR DOORS.

1,117,709. Specification of Letters Patent. Patented Nov. 17, 1914.

Application filed August 6, 1914. Serial No. 855,795.

To all whom it may concern:

Be it known that I, THOMAS O. SCHRADER, a citizen of the United States, residing at Allentown, in the county of Lehigh and State of Pennsylvania, have invented certain new and useful Improvements in Latches for Doors, of which the following is a specification.

My invention has relation to a latch for doors, for closing refrigerators, among other uses therefor; and in such connection it relates to the particular constructive arrangement thereof, so that slamming the door fastens the same against release until the pull-handle thereof is operated.

The nature and scope of my present invention will be more fully understood from the following description taken in connection with the accompanying drawings forming part hereof, in which—

Figure 1, is a front elevational view of the latch-fastener for refrigerator and other doors, in an operative position, embodying essential main features of my said invention. Fig. 2, is a side elevational view of one of the members of the latch-fastener. Fig. 3, is a side elevational view of the pull-handle in a position to permit of release of the latch-fastener, to open the door. Fig. 4, is a vertical sectional view through the incased spring controlled shiftable cam of the latch-fastener, showing the tongue or projection of the housing for the pivotal pull-handle in an operative position and also said pull-handle in such position as to permit of the locking of the same. Fig. 5, is a top or plan view; and Fig. 6, is a transverse central sectional view through both members of the said latch-fastener.

Referring to the drawings *a*, is the door with a lock housing a^1, applied thereto and having a projection or tongue a^2. The housing is recessed at a^3, to pivotally support a pull-handle a^4, having a recessed flaring sidewise extending finger a^5, and underneath the handle it is provided with an inturned recessed foot a^6, to engage a keeper a^7, of a shiftable locking means *b*, mounted in the housing a^1. This means is provided with a key turning spindle and stud a^8, for shifting the keeper a^7, into contact with the inturned recessed foot a^6, of the pull-handle a^4, as clearly shown in Fig. 6, and while the said handle a^4, occupies a vertical depending position, for example, the position as shown in Figs. 1 and 2.

The door-jamb *c*, is provided with a side notched box-like casing c^1, for the mounting of a shiftable pivoted cam c^2, therein. This cam is provided with a coiled spring c^3 which is at one end c^4, connected with the cam and at the opposite end c^5 with the said casing c^1, as clearly shown in Fig. 4, so as to normally maintain the said cam in an operative position to be readily shifted against the tension of the spring c^3, by the tongue or projection a^2, contacting with the said cam by the slamming of the door *a*, causing the said tongue or projection thereby to slip over the surface of said cam to occupy the position in the casing c^1, as clearly shown in Fig. 4, thus holding the door securely fastened against release, until the pull-handle is elevated to depress sufficiently the said cam c^2, to enable the tongue or projection a^2, to ride back over the said cam, with the door ajar and with the pull-handle in a vertical depending position. When the latch-fastener occupies the position shown in Fig. 4, in which position the door is fastened against release, the pull-handle will be in a vertical depending position with the recessed foot a^6, of said handle registering with the keeper a^7, of the locking-means *b*, arranged alongside of the pull-handle a^4. Then by turning the key *d*, in the slotted spindle or stud a^8, of the locking-means *b*, the keeper a^7 thereof, will be shifted into contact with the recessed foot a^6 of the said pull-handle to prevent further movement thereof.

Having thus described the nature and objects of my invention, what I claim as new and desire to secure by Letters Patent is:—

A latch-fastener for doors, comprising a housing having a tongue and a pivotally

supported pull-handle having a finger, a spring controlled shiftable cam mounted in a casing of the door-jamb and arranged to be actuated by said tongue to latch said door and by said finger through the actuation of said handle to release said door.

In witness whereof I have hereunto set my signature in the presence of two subscribing witnesses.

THOMAS O. SCHRADER.

Witnesses:
MABEL G. DAVIS,
CLARA SCHAADT.

DEFENDANT'S EXHIBIT No. 7.

U. S. Patent No. 1,170,685 to T. O. Schrader.

T. O. SCHRADER.

SAFETY LOCK LATCH FOR REFRIGERATOR DOORS.

APPLICATION FILED JULY 1, 1915.

1,170,685.

Patented Feb. 8, 1916.

Fig. 1.

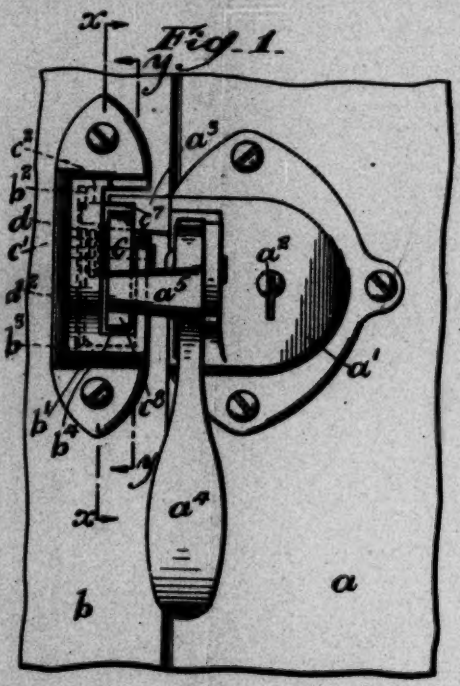


Fig. 2.

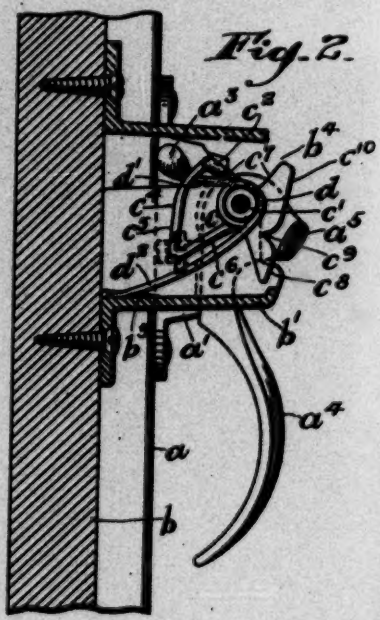


Fig. 3.

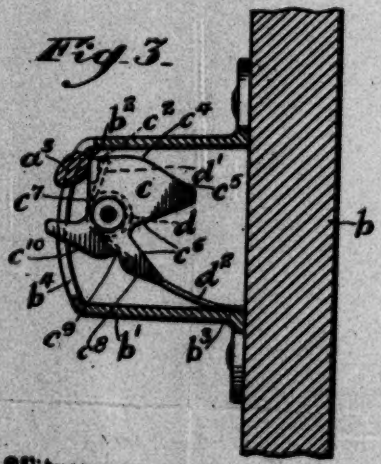
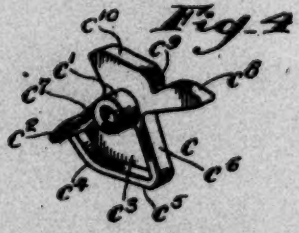


Fig. 4.



Witnesses

Thos. Rosemond.

Inventor

Thomas O. Schrader,

By

Walter Dunbar

Attorney

UNITED STATES PATENT

THOMAS O. SCHRADER, OF ALLENTOWN, PENNSYLVANIA, A
HARDWARE COMPANY, OF FULLERTON, PENNSYLVANIA
PENNSYLVANIA.

SAFETY LOCK-LATCH FOR REFRIGERATOR-D

1,170,685. Specification of Letters Patent. P

Application filed July 1, 1915. Serial No. 37,412.

To all whom it may concern:

Be it known that I, THOMAS O. SCHRADER, a citizen of the United States, residing at Allentown, in the county of Lehigh and State of Pennsylvania, have invented certain new and useful Improvements in Safety Lock-Latches for Refrigerator-Doors, of which the following is a specification.

My invention relates to a latch particularly adapted for use in connection with refrigerator-doors, of the type in which slamming the door against the door-jamb latches the door and turning then a key causes the engaged latch to be locked, but it has been found that when the key is turned which causes the latch to assume a locked condition, it is possible to insert a thin bar against one end of the cam-device to shift the same so as to enable the tongue of the lock-casing to clear the cam-device and thus to open the door, while the latch is still in a locked condition; and therefore, my present invention is designed to prevent just such defined act, by the provision of a peculiar form of cam-device held preferably under spring-tension and so arranged as that any attempt to release the tongue of the lock-casing as well as any attempt at manipulating the finger of the pivoted lever, will be prevented by the form of the said cam-device, when the latched door is in a locked condition.

The nature and scope of my present invention will be more fully understood from the following description taken in connection with the accompanying drawings forming part hereof, in which—

Figure 1, is a front elevational view of a latch fastener with the safety feature of my present invention, embodied therein. Fig. 2, is a view partly in vertical section on the line x, x of Fig. 1, and in side elevation of the pivoted operating lever of the said latch fastener. Fig. 3, is a view in vertical section on the line y, y of Fig. 1 and in side elevation of the spring controlled cam-device embodying particular features as constructively arranged of my said invention and with a lock-casing casing is provided a projecting tongu lever a^4, having a the lock arrangeme and for the operati is made to my Unit No. 1,117,709 of N showing an efficien with the type of la the particular featu tion.

The door-jamb b, ing b^1, having an ob top, and the said c door-jamb b. Inter provided a lug b^2, an vided a recess b^3, bo Fig. 3, for purposes fully explained.

The cam-device c, in the casing b. Thi formation, as clearly ing on one side a hu mounted a coiled sp terminals d^1 and d^2, c c^3, projecting from ab and in the recess b^3, One portion of the d hollowed out at c^3, the is curved at c^4 and rounded end and there an inverted V-shape a tially the same form at c^5, while the top is s across with the edge su having an intermediat them, as clearly shown the detail arrangement shown may be varied a sults be obtained, with the scope of my prese said device for the pur said lock-latch. With sa cam-device c, mounted clearly shown in Fig. 3, of the said device will ing lug b^2. The arran

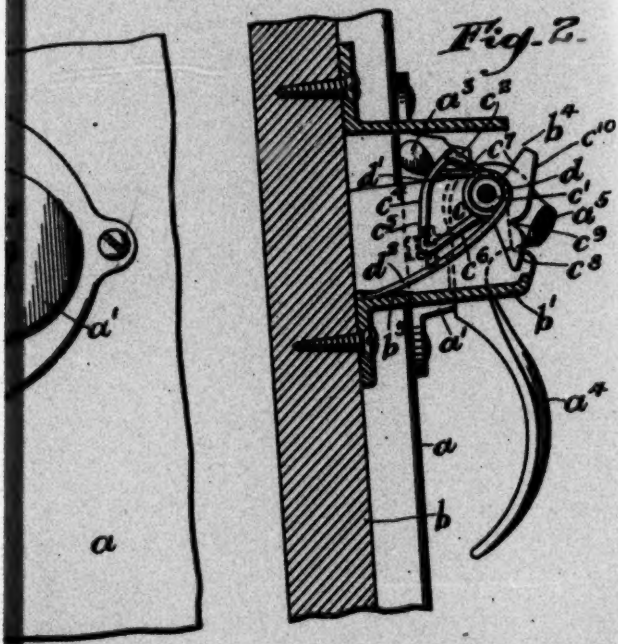
T. O. SCHRADER.

LOCK LATCH FOR REFRIGERATOR DOORS.

APPLICATION FILED JULY 1, 1915.

Patented Feb. 8, 1916.

Fig. 2.



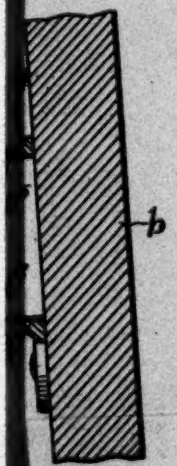
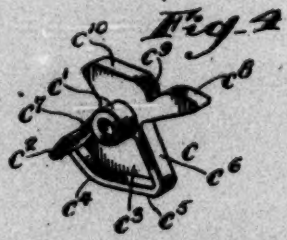


Fig. 4.



Inventor

Thomas O. Schrader,

By Walter Douglas

Atty

UNITED STATES PATENT OFFICE.

THOMAS O. SCHRADER, OF ALLENTOWN, PENNSYLVANIA, ASSIGNOR TO THE DENT HARDWARE COMPANY, OF FULLERTON, PENNSYLVANIA, A CORPORATION OF PENNSYLVANIA.

SAFETY LOCK-LATCH FOR REFRIGERATOR-DOORS.

1,170,685. Specification of Letters Patent. Patented Feb. 8, 1916.

Application filed July 1, 1915. Serial No. 37,412.

To all whom it may concern:

Be it known that I, THOMAS O. SCHRADER, a citizen of the United States, residing at Allentown, in the county of Lehigh and State of Pennsylvania, have invented certain new and useful Improvements in Safety Lock-Latches for Refrigerator-Doors, of which the following is a specification.

My invention relates to a latch particularly adapted for use in connection with refrigerator-doors, of the type in which slamming the door against the door-jamb latches the door and turning then a key causes the engaged latch to be locked, but it has been found that when the key is turned which causes the latch to assume a locked condition, it is possible to insert a thin bar against one end of the cam-device to shift the same so as to enable the tongue of the lock-casing to clear the cam-device and thus to open the door, while the latch is still in a locked condition; and therefore, my present invention is designed to prevent just such defined act, by the provision of a peculiar form of cam-device held preferably under spring-tension and so arranged as that any attempt to release the tongue of the lock-casing as well as any attempt at manipulating the finger of the pivoted lever, will be prevented by the form of the said cam-device, when the latched door is in a locked condition.

The nature and scope of my present invention will be more fully understood from the following description taken in connection with the accompanying drawings forming part hereof, in which—

Figure 1, is a front elevational view of a latch fastener with the safety feature of my present invention, embodied therein. Fig. 2, is a view partly in vertical section on the line x, x of Fig. 1, and in side elevation of the pivoted operating lever of the said latch fastener. Fig. 3, is a view in vertical section on the line y, y of Fig. 1 and in side elevation of the spring controlled cam-device embodying particular features as constructively arranged of my said invention and shown therein in a position for operating; and Fig. 4, is a perspective view of the re-

with a lock-casing a^1, secured thereto. This casing is provided with a key-way a^2, with a projecting tongue a^3, and an operating lever a^4, having a projecting finger a^5, for the lock arrangement of the said casing a^1, and for the operation of the same, reference is made to my United States Letters Patent No. 1,117,709 of November 17th, 1914, as showing an efficient arrangement for use, with the type of latch-fastener embodying the particular features of my present invention.

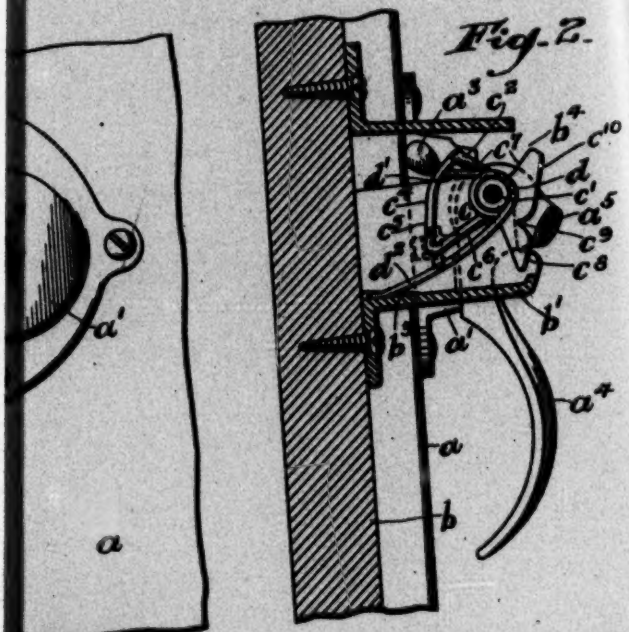
The door-jamb b, is provided with a casing b^1, having an oblong opening b^4, in the top, and the said casing is secured to the door-jamb b. Internally in one corner is provided a lug b^2, and in the bottom is provided a recess b^3, both as clearly shown in Fig. 3, for purposes to be presently more fully explained.

The cam-device c, is pivotally mounted in the casing b. This device is of peculiar formation, as clearly shown in Fig. 4, having on one side a hub c^1, around which is mounted a coiled spring d, the respective terminals d^1 and d^2, of which engage a lug c^2, projecting from about one corner thereof and in the recess b^3, of the said casing b^1. One portion of the device c, as shown, is hollowed out at c^3, the periphery in this part is curved at c^4 and inclined at c^5, to the rounded end and therefrom it is formed into an inverted V-shape at c^6, and is substantially the same form on the opposite side at c^7, while the top is substantially straight across with the edge surfaces c^8 and c^{10} and having an intermediate notch c^9, between them, as clearly shown in Fig. 4. However, the detail arrangement of the said device as shown may be varied and equally good results be obtained, without departing from the scope of my present invention of the said device for the purposes defined in the said lock-latch. With said spring controlled cam-device c, mounted in the casing b^1, as clearly shown in Fig. 3, normally the lug c^2, of the said device will bear against the casing lug b^2. The arrangement of the spring, as shown may be varied or omitted and still the cam-device be operative.

APPLICATION FILED JULY 1, 1915.

Patented Feb. 8, 1916.

Fig. 2.



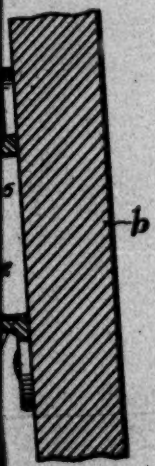


Fig. 4.



Inventor

Thomas A. Schrader,

J. Walter Douglass.

Attorney

Witness

Smith

HARDWARE COMPANY, OF ALLENTOWN, PENNSYLVANIA.

SAFETY LOCK-LATCH FOR REFRIGERATOR-DOORS.

1,170,685. Specification of Letters Patent. Patented Feb. 8, 1916.

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The nature and scope of my present invention will be more fully understood from the following description taken in connection with the accompanying drawings forming part hereof, in which—

Figure 1, is a front elevational view of a latch fastener with the safety feature of my present invention, embodied therein. Fig. 2, is a view partly in vertical section on the line x, x of Fig. 1, and in side elevation of the pivoted operating lever of the said latch fastener. Fig. 3, is a view in vertical section on the line y, y of Fig. 1 and in side elevation of the spring controlled cam-device embodying particular features as constructively arranged of my said invention and shown therein in a position for operating; and Fig. 4, is a perspective view of the reverse side of the cam-device to that shown in Fig. 3, detached from the casing, in which mounted.

Referring to the drawings a, is the door with a lock-casing a^1, secured thereto. This casing is provided with a key-way a^2, with a projecting tongue a^3, and an operating lever a^4, having a projecting finger a^5, for the lock arrangement of the said casing a^1, and for the operation of the same, reference is made to my United States Letters Patent No. 1,117,709 of November 17th, 1914, as showing an efficient arrangement for use, with the type of latch-fastener embodying the particular features of my present invention.

The door-jamb b, is provided with a casing b^1, having an oblong opening b^4, in the top, and the said casing is secured to the door-jamb b. Internally in one corner is provided a lug b^2, and in the bottom is provided a recess b^3, both as clearly shown in Fig. 3, for purposes to be presently more fully explained.

The cam-device c, is pivotally mounted in the casing b. This device is of peculiar formation, as clearly shown in Fig. 4, having on one side a hub c^1, around which is mounted a coiled spring d, the respective terminals d^1 and d^2, of which engage a lug c^2, projecting from about one corner thereof and in the recess b^3, of the said casing b^1. One portion of the device c, as shown, is hollowed out at c^3, the periphery in this part is curved at c^4 and inclined at c^5, to the rounded end and therefrom it is formed into an inverted V-shape at c^6, and is substantially the same form on the opposite side at c^7, while the top is substantially straight across with the edge surfaces c^8 and c^{10} and having an intermediate notch c^9, between them, as clearly shown in Fig. 4. However, the detail arrangement of the said device as shown may be varied and equally good results be obtained, without departing from the scope of my present invention of the said device for the purposes defined in the said lock-latch. With said spring controlled cam-device c, mounted in the casing b^1, as clearly shown in Fig. 3, normally the lug c^2, of the said device will bear against the casing lug b^2. The arrangement of the spring, as shown may be varied or omitted and still the cam-device be operative.

Slamming the door a, against the jamb b, will cause the tongue a^3, by the force exerted against the part c^7, of the device c, to move the same against the tension of the

spring d, to allow the tongue a^3, to move into such a position as to engage the upper portion of the surface c^7 of the said cam-device to hold the said tongue against shifting and thus the door in a closed position. Turning the key in the key-way a^5, causes the operating lever a^4, to be locked with relation to the engaged position of the tongue a^3, with the said device c, as clearly shown in Fig. 2. It will thus be observed that any attempt to shift the said cam-deivce from this position with the finger a^2, in contact with the part c^8, of said device will be prevented and likewise any movement of the tongue a^3, sufficiently to release it from its engagement with the said device to open the door. The surface c^{10}, of the cam-device c, is adapted when the latch is unlocked to contact with the finger a^2, of the operating lever a^4, which depresses the part c^{10}, of the said device c, to cause it to assume momentarily such a position under the tension of the spring d, as to enable release of the tongue a^3, from its engaged relation with the part c^7, of the said device c, to thus freely open the door a. If for any reason the spring d, under which the device c, is held in operative position, as above described should become broken or disarranged and the latched door be still locked, the arrangement of the device c is such, that it will still prevent opening the door, because any attempt at shifting the device will cause at the same time, the finger a^2, of the operating lever a^4 to engage the part c^8, of the said device, to prevent a movement to such an extent as to shift the said device c, or to release the tongue a^3, from contact with the part c^7, of said device so that thereby the foregoing arrangement provides a safety lock-latch fastener for a refrigerator or other door.

Having thus described the nature and objects of my invention, what I claim as new and desire to secure by Letters Patent is:—

1. In a device of the character described, a lock-casing having a tongue, an operating lever having a finger, a casing and a spring controlled device mounted in said casing and having a cam-surface for said tongue to engage, to hold the door latched and an opposite contact-surface adapted to permit of the turning of said device in one position of movement of said finger and to prevent movement of said device in the other position of movement of said finger.

2. In a device of the character described, a lock-casing having a tongue, an operating lever having a finger, a casing having an oblong opening in the top and a spring controlled device mounted in said casing and having a cam-surface for said tongue to engage to hold the door latched and an opposite divided contact surface adapted to permit of the turning of said device in one position of movement of said finger and to prevent movement of said device in the other position of movement of said finger.

In witness whereof, I have hereunto set my signature in the presence of two subscribing witnesses.

THOMAS O. SCHRADER.

Witnesses:
MABEL G. DAVIS,
CLARA K. SCHAADT.

DEFENDANT'S EXHIBIT No. 8.

U. S. Patent 1,265,120 to T. O. Schrader.

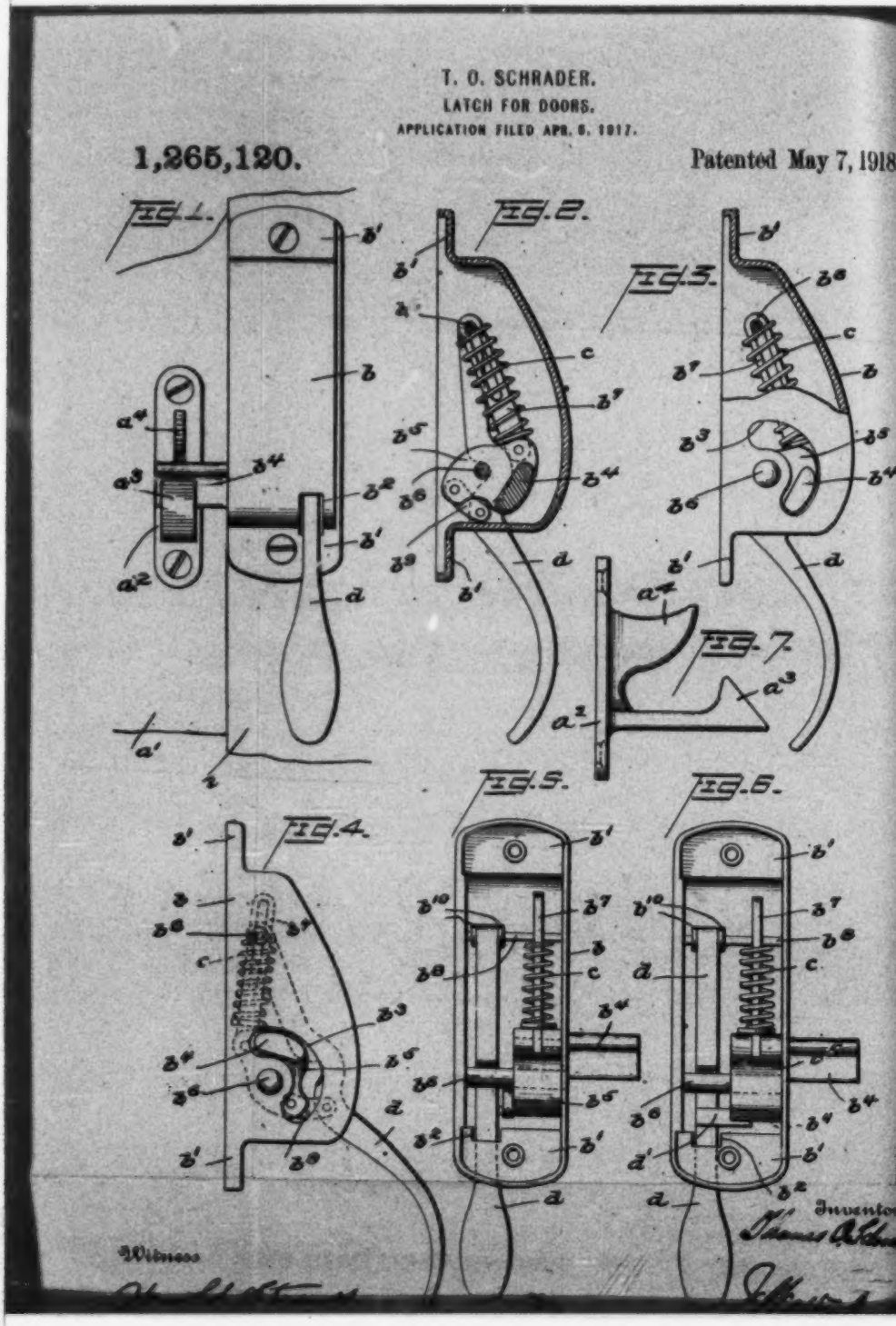
T. O. SCHRADER.

LATCH FOR DOORS.

APPLICATION FILED APR. 6, 1917.

1,265,120.

Patented May 7, 1918



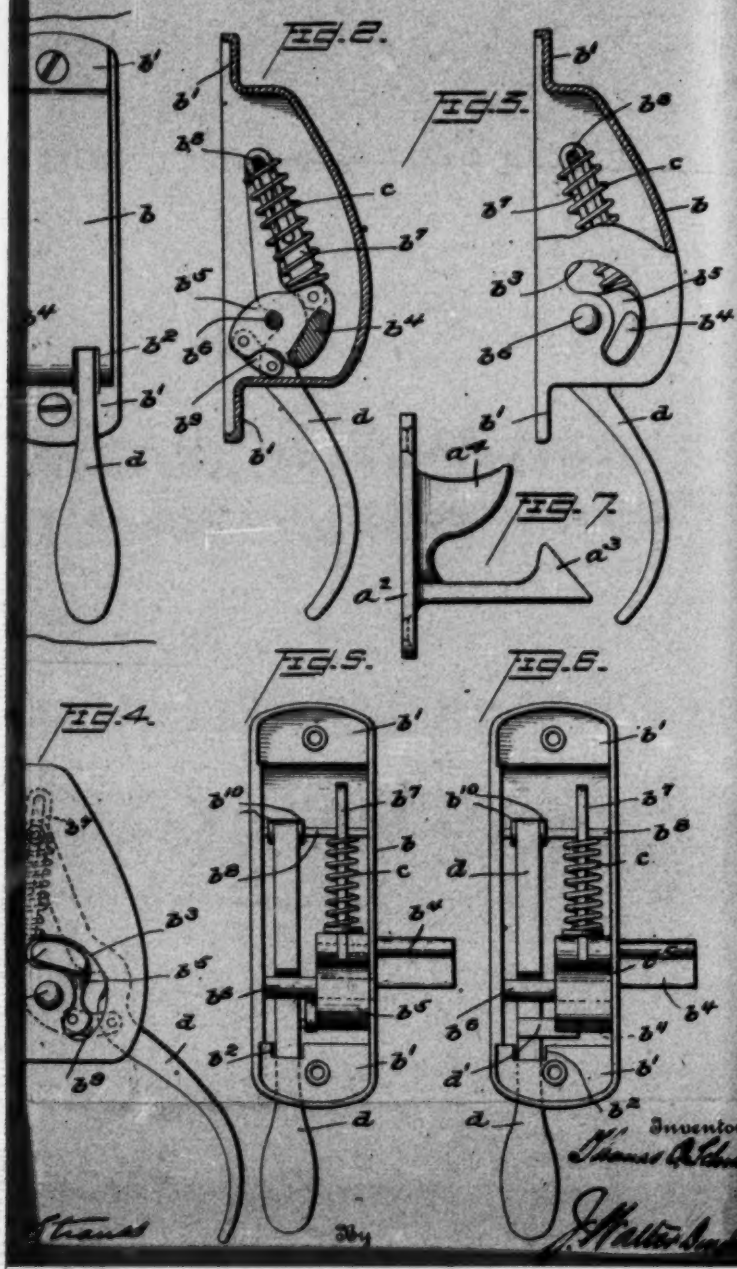
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LATCH FOR DOORS.

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Patented May 7, 1918.



UNITED STATES PATENT OFFICE.

THOMAS O. SCHRADER, OF ALLENTOWN, PENNSYLVANIA, ASSIGNOR TO THE DENT HARDWARE COMPANY, OF FULLERTON, PENNSYLVANIA, A CORPORATION OF PENNSYLVANIA.

LATCH FOR DOORS.

1,265,120. Specification of Letters Patent. Patented May 7, 1918.

Application filed April 6, 1917. Serial No. 160,121.

To all whom it may concern:

Be it known that I, THOMAS O. SCHRADER, a citizen of the United States, residing at Allentown, in the county of Lehigh and State of Pennsylvania, have invented certain new and useful Improvements in Latches for Doors, of which the following is a specification.

My invention has relation to a latch for closing refrigerator doors among other types of doors; and in such connection it relates to the particular constructive arrangement of the same.

The principal objects of my invention are first, to provide a latch with a bolt and an operating lever-handle to latch the door in either the raised or lowered position of the handle by manual pressure exerted against the door or simply slamming the same to thereby cause the bolt to snap into engagement with a keeper therefor; second to provide a latch in which the coiled spring thereof in the compressed condition of the same firmly holds the bolt of the latch so that by pressure exerted manually against the door the spring in expanding, will automatically cause the latch bolt to snap into engagement with the keeper to thus securely lock the door; and third, to provide a latch arranged so that the coiled spring thereof in the event of the spring becoming disarranged or broken, the operating lever-handle of the latch can be manipulated to either release or engage the latch bolt from or with the keeper to thus instantly open or close the door.

The nature and scope as well as characteristic features of my invention will be more fully understood from the following description taken in connection with the accompanying drawings forming part hereof, in which—

Figure 1, is a front elevational view of a latch for a door, embodying the salient features of my invention.

Fig. 2, is a vertical sectional view through the incasement for a latch for a door of my said invention, showing the detail arrangement thereof.

Fig. 3, is a side elevational view partly in broken section, showing the latching member [illegible] through a slotted wall of the casing and the operating lever-handle for manipulating the said cam to thereby position the said latch, for the locking of the door.

Fig. 4, is a front end view of the incased latch, with the operating lever-handle, the latching member being shown in a shifted condition with the operating lever handle elevated, whereby upon pressure exerted against or slamming of the door the latch will snap under the keeper-head in the manner for example, as shown in Fig. 1.

Fig. 5, is a rear elevational view of the internal arrangement of the latching element and operating lever-handle.

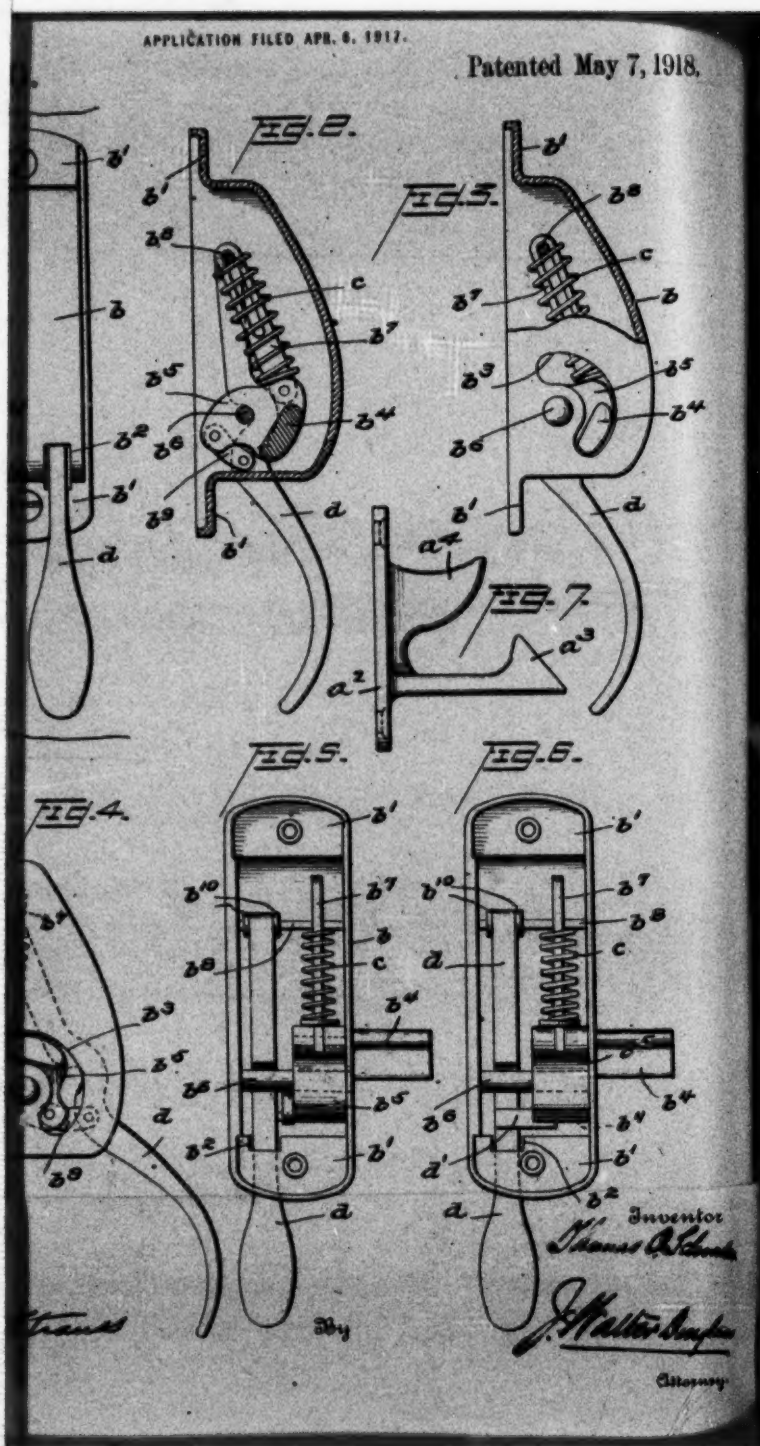
Fig. 6, is a similar view of a slightly modified form of the operating lever-handle and latching member cam, in this instance provided with a recess for engaging the lug of said handle therein, for shifting said member; and

Fig. 7 is a side elevational view of the keeper, for the latching member.

Referring to the drawings *a*, is a door and a^1, a door frame surrounding the same. The frame a^1, is provided with a keeper a^2, having an inclining offset head a^3, and a rear projection forming a stop or rest a^4, for purposes to be presently explained. *b*, is an incasement provided with end base seats b^1 and b^1, for securing the same to the door *a*. The incasement is provided with a front oblong vertical slot b^2, and with a semi-circular slot b^3, in one of the side walls of the said incasement *b*, both of which slots are provided for purposes to be presently fully explained. The latching member b^4, projects through the semi-circular slot b^3, and is provided with a cam b^5, movably mounted on a spindle or pin b^6, fixed to the side walls of the casing *b*, as clearly shown in Fig. 5. To the forked portion of the cam b^5, is pivoted a slotted connecting rod b^7, carrying thereon a coiled spring *c*; the opposite end of said rod is mounted on a rear spindle or pin b^8, fixed to the side walls of the casing *b*, as clearly shown in Fig. 5. The coiled spring *c*, abuts at one end against the rear portion of the latch cam b^5, and at the opposite end against the spindle or pin b^8. The operating lever-handle *d*, in its preferably curved form extends through the vertical slot b^2, in the front of the casing *b*,

APPLICATION FILED APR. 6, 1917.

Patented May 7, 1918.



HARDWARE COMPANY, OF FULLERTON, PENNSYLVANIA, A CORPORATION OF PENNSYLVANIA.

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The principal objects of my invention are first, to provide a latch with a bolt and an operating lever-handle to latch the door in either the raised or lowered position of the handle by manual pressure exerted against the door or simply slamming the same to thereby cause the bolt to snap into engagement with a keeper therefor; second to provide a latch in which the coiled spring thereof in the compressed condition of the same firmly holds the bolt of the latch so that by pressure exerted manually against the door the spring in expanding, will automatically cause the latch bolt to snap into engagement with the keeper to thus securely lock the door; and third, to provide a latch arranged so that the coiled spring thereof in the event of the spring becoming disarranged or broken, the operating lever-handle of the latch can be manipulated to either release or engage the latch bolt from or with the keeper to thus instantly open or close the door.

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Figure 1, is a front elevational view of a latch for a door, embodying the salient features of my invention.

Fig. 2, is a vertical sectional view through the incasement for a latch for a door of my said invention, showing the detail arrangement thereof.

Fig. 3, is a side elevational view partly in broken section, showing the latching member extending through a slotted wall of the incasement therefor and the integral cam of the latching member and the coiled spring, the latter shown in an expanded condition and the operating lever-handle for manipulating the said cam to thereby position the said latch, for the locking of the door.

Fig. 4, is a front end view of the incased latch, with the operating lever-handle, the latching member being shown in a shifted condition with the operating lever handle elevated, whereby upon pressure exerted against or slamming of the door the latch will snap under the keeper-head in the manner for example, as shown in Fig. 1.

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Fig. 6, is a similar view of a slightly modified form of the operating lever-handle and latching member cam, in this instance provided with a recess for engaging the lug of said handle therein, for shifting said member; and

Fig. 7 is a side elevational view of the keeper, for the latching member.

Referring to the drawings a, is a door and a^1, a door frame surrounding the same. The frame a^1, is provided with a keeper a^2, having an inclining offset head a^3, and a rear projection forming a stop or rest a^4, for purposes to be presently explained. b, is an incasement provided with end base seats b^1 and b^1, for securing the same to the door a. The incasement is provided with a front oblong vertical slot b^2, and with a semi-circular slot b^3, in one of the side walls of the said incasement b, both of which slots are provided for purposes to be presently fully explained. The latching member b^4, projects through the semi-circular slot b^3, and is provided with a cam b^5, movably mounted on a spindle or pin b^6, fixed to the side walls of the casing b, as clearly shown in Fig. 5. To the forked portion of the cam b^5, is pivoted a slotted connecting rod b^7, carrying thereon a coiled spring c; the opposite end of said rod is mounted on a rear spindle or pin b^8, fixed to the side walls of the casing b, as clearly shown in Fig. 5. The coiled spring c, abuts at one end against the rear portion of the latch cam b^5, and at the opposite end against the spindle or pin b^8. The operating lever-handle d, in its preferably curved form extends through the vertical slot b^2, in the front of the casing b, and which lever-handle is operable to revolve partially the cam b^5, to thereby actuate the latching member b^4, in the slot b^3,

as clearly shown in Fig. 1. The lever-handle d, is connected with the latch cam b^5, by means of a link b^9, for positively actuating the same and thus to provide a range of movement in substantially the arc of a circle through the slot b^3, of the incasement b, to permit of the setting and holding of the said member to the rear rest a^4 of the keeper-head for while in such position by slamming or pressing the door a, against the frame a^1, to cause the latching-member under compression of the spring c, to be released and snap in a forward direction from the said rest a^4, beneath the head a^3, of the keeper a^2. The latching-member as thus arranged can be manipulated for locking the door in either the lifted or lowered position of the handle d. Furthermore the latch-cam spring b^6, in its expanded position with the latching member b^4, engaged by the head a^3, of the keeper a^2, will hold the door a, in a tightly closed condition against the frame a^1.

The operating lever-handle d, is arranged as shown in Fig. 5, spanning the pin or spindle b^8, and on which the latch-cam b^5, is movably mounted. The extension of the handle d, is held in required alining relationship on the rear spindle or pin b^8, by means of a collar b^{10}, applied thereto, as clearly shown in Fig. 5. This handle is so arranged as to be adapted to release the latching member from its engagement with the keeper-head a^3, whether the cam spring is in a good working condition or not, by simply actuating the same in an upward direction which opens the door a; moreover, it is adapted due to its arrangement to force the door into an open position should the door become swollen or tightened from any cause, by simply manipulating the same, in a vertical direction.

The latch of Fig. 6 in constructive arrangement is the same as hereinbefore described, save that the latch-cam in this instance is formed with a deep recess b^{11}, and the operating lever-handle d, is provided with a side lug d^1, for engaging in said recess for thereby operating said cam and shifting the latching member an integral part of the said cam. In all other respects the latch is the same as illustrated in Figs. 1 to 5 inclusive.

Having described the nature and objects of my invention, what I claim as new and desire to secure by Letters Patent is:—

1. The combination, in a latch, of a keeper and a cam having a bolt formed therewith and engaging said keeper, a cross-pin, a rod mounted on said pin and connected with said cam, an operating lever-handle pivotally connected with said pin and a link connected with said handle and cam opposite the position of the bolt of said cam, substantially as and for the purposes described.

2. The combination in a latch, of a keeper and a cam having a bolt arranged to engage said keeper, a cross-pin, a rod slidably mounted on said pin and connected with said cam, a spring mounted on said rod, the terminals whereof respectively, bear against said pin and cam, an operating lever-handle pivotally connected with said pin and a link connected with said handle and cam opposite the position of the bolt of said cam, substantially as and for the purposes described.

3. The combination, in a latch, of a keeper and a cam having a bolt arranged to engage said keeper, said cam provided with a recess, a cross-pin, a rod mounted on said pin and connected with said cam, a spring mounted on said rod, the terminals whereof respectively, bear against said pin and cam, an operating lever-handle having a lug arranged to engage the recess of said cam, and said handle pivotally connected with said pin, substantially as and for the purposes described.

In witness whereof, I have hereunto set my signature in the presence of two subscribing witnesses.

THOS. O. SCHRADER.

Witnesses:
MABEL G. DAVIS,
ELSIE V. LICHTY.

DEFENDANT'S EXHIBIT No. 9.

U. S. Patent No. 1,575,647 to T. O. Schrader.

March 9, 1926. 1,575,647

T. O. SCHRADER

LOCK DEVICE FOR REFRIGERATOR DOORS

Filed June 30, 1925

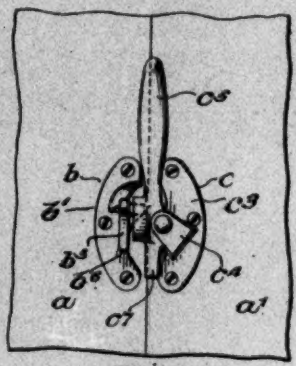


Fig. 1.

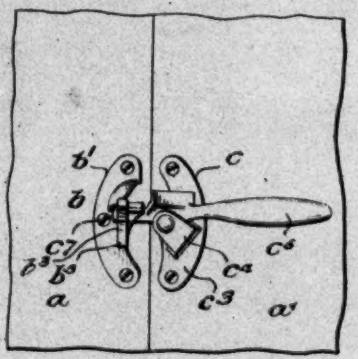


Fig. 2.

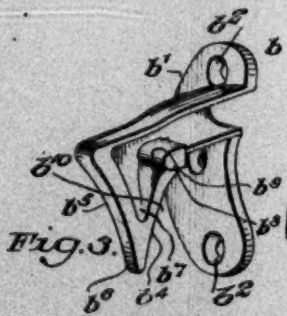


Fig. 3.

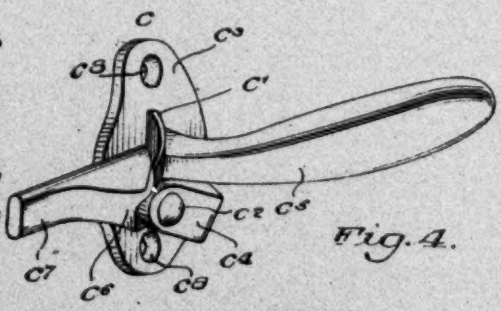


Fig. 4.



Fig. 5.

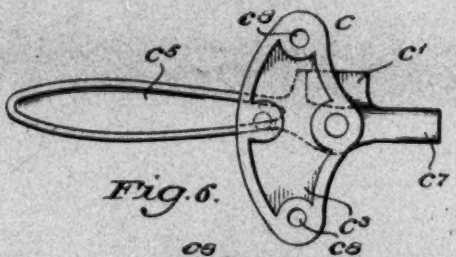


Fig. 6.



Fig. 7.

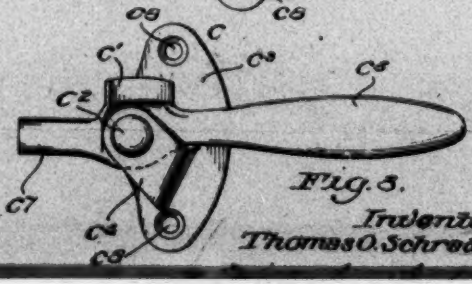
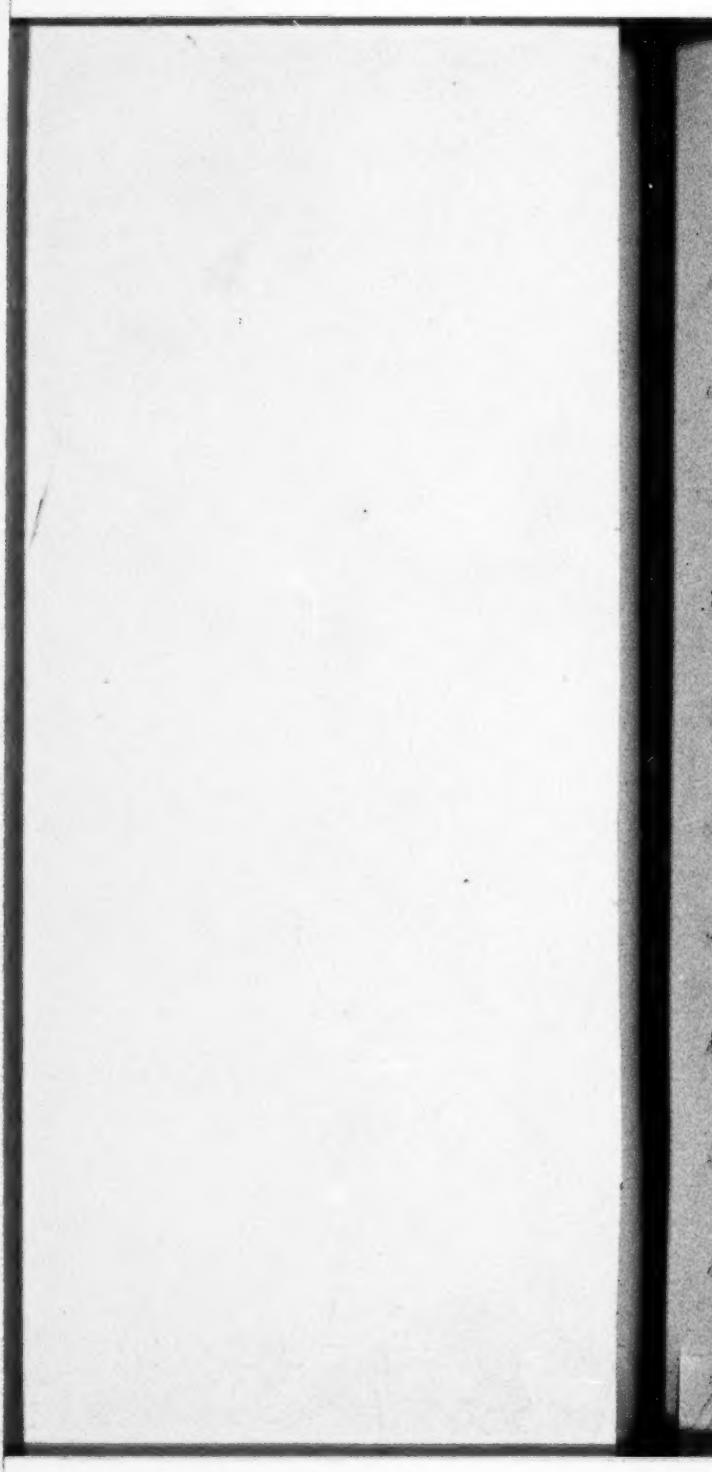


Fig. 8.

Inventor
Thomas O. Schrader.



Patented Mar. 9, 1926. 1,575,647

UNITED STATES PATENT OFFICE.

THOMAS O. SCHRADER, OF ALLENTOWN, PENNSYLVANIA, ASSIGNOR TO DENT HARDWARE CO., OF FULLERTON, PENNSYLVANIA, A CORPORATION OF PENNSYLVANIA.

LOCK DEVICE FOR REFRIGERATOR DOORS.

Application filed June 30, 1925. Serial No. 40,474.

To all whom it may concern:

Be it known that I, THOMAS O. SCHRADER, a citizen of the United States, residing at the city of Allentown, in the county of Lehigh and State of Pennsylvania, have invented a certain new and useful Lock Device for Refrigerator Doors, of which the following is a specification.

My invention relates to a locking device for refrigerator and other doors; and in such connection it relates more particularly to a locking device adapted to be operated by the slamming or quick closing of the door, thereby to cause an automatic and instantaneous engagement between a movable tongue member and a stationary keeper of said locking device.

In the employment of locking devices on refrigerators, it is desirable, as well as important, to provide a fastening device for such structures that can be readily and quickly manipulated to both open and to close the door thereof, and also to maintain said door tightly locked, in the closed position, yet nevertheless, in such a manner as to be capable of being easily released when required; and to the foregoing ends, my present invention has been particularly designed, with a view to simplicity of structure and operation for effecting not only quick opening of the door but also quick closing of the same.

My invention, stated in general terms, consists of a refrigerator locking device constructively arranged in substantially the manner hereinafter described and claimed.

The nature and characteristic features of my invention will be more fully understood from the following description, taken in connection with the accompanying drawings forming part hereof, in which—

Figure 1 is a fragmentary view in elevation of refrigerator parts showing the same provided with a locking device embodying main features of my invention, with the door of the refrigerator shown in partly open position, and the locking device unlatched.

Figure 2 is a similar view showing the door in closed position and the locking device latched.

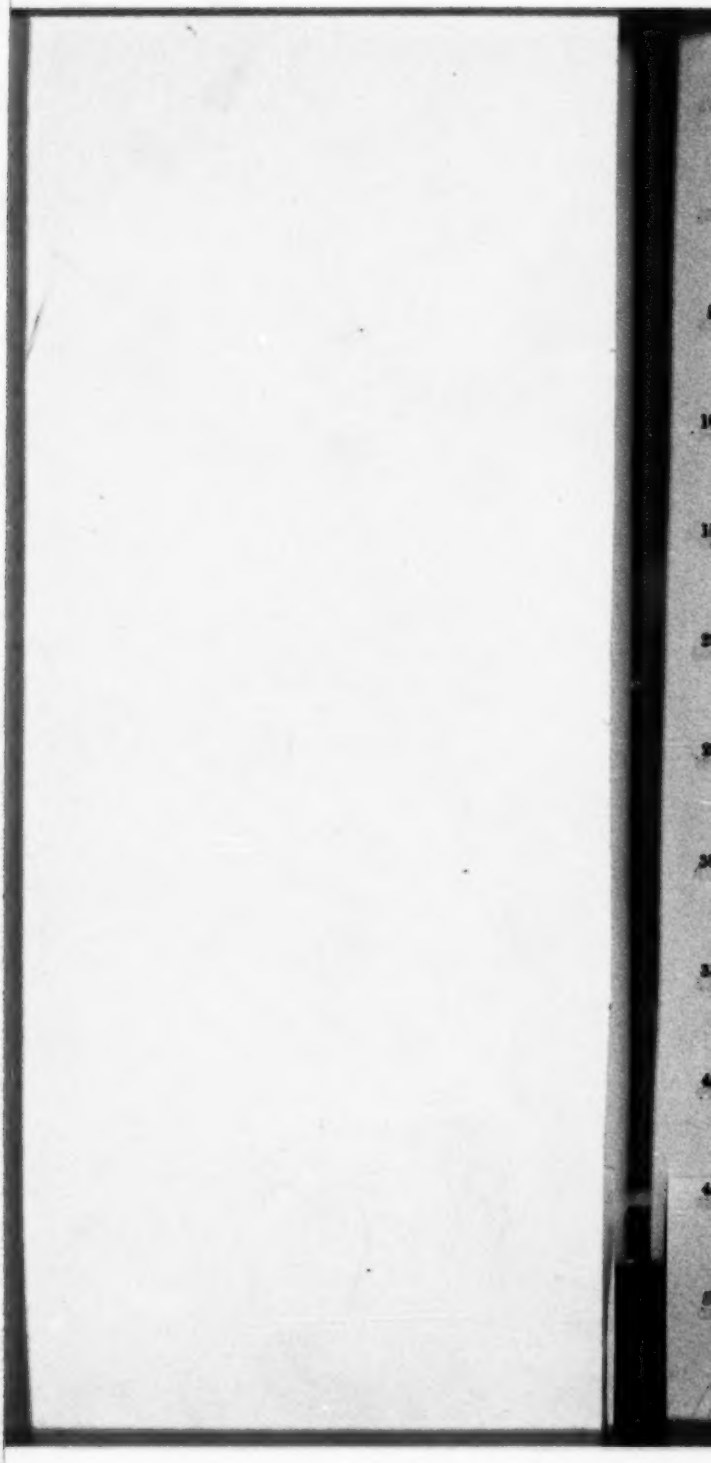
Figure 3 is a detail view in perspective of the keeper member and the locking member.

Figures 5 and 6 are respectively, rear end views of the keeper and tongue members of the automatically actuating refrigerator lock, defining the particular arrangement of the same, and

Figures 7 and 8 are similar views from the opposite side of the respective keeper and tongue members, showing the structural arrangement of the same.

For the purpose of illustrating my invention I have shown in the accompanying drawings several forms thereof which are at present preferred by me, since the same have been found in practice to give satisfactory and reliable results, although it is to be understood that the various instrumentalities of which my invention consists can be variously arranged and organized and that my invention is not limited to the precise arrangement and organization of the instrumentalities as herein shown and described.

Referring to the drawings the reference letter *a* designates a refrigerator structure and a^1 the door thereof. There is shown applied to the structure *a*, the keeper member *b*, of my invention, which in structural arrangement, consists of a baseplate b^1, formed with apertures b^2 for the reception of screws, to adapt the same for being secured in place, adjacent to the door opening. The keeper plate b^3 is formed integral with the base plate b^1 and projects upwardly therefrom at substantially a right angle thereto. The keeper plate b^3 is provided with the rear and front downwardly converging concaved edges b^4 and b^5 respectively; meeting in the downwardly projecting nose b^6. The keeper plate b^3 is hollowed out at b^7 on its inner side and is provided with a laterally projecting pin b^8, formed integral therewith and having the convexed front surface b^9, forming a riding surface for a cam c^1, of the locking member *c*, to be presently fully explained. The laterally projecting pin b^8 of the keeper plate b^3 serves to encounter a cam c^2 of the latch member *c* when the door



UNITED STATES PATENT OFFICE.

THOMAS O. SCHRADER, OF ALLENTOWN, PENNSYLVANIA, ASSIGNOR TO DENT HARDWARE CO., OF FULLERTON, PENNSYLVANIA, A CORPORATION OF PENNSYLVANIA.

LOCK DEVICE FOR REFRIGERATOR DOORS.

Application filed June 30, 1925. Serial No. 40,474.

To all whom it may concern:

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In the employment of locking devices on refrigerators, it is desirable, as well as important, to provide a fastening device for such structures that can be readily and quickly manipulated to both open and to close the door thereof, and also to maintain said door tightly locked, in the closed position, yet nevertheless, in such a manner as to be capable of being easily released when required; and to the foregoing ends, my present invention has been particularly designed, with a view to simplicity of structure and operation for effecting not only quick opening of the door but also quick closing of the same.

My invention, stated in general terms, consists of a refrigerator locking device constructively arranged in substantially the manner hereinafter described and claimed.

The nature and characteristic features of my invention will be more fully understood from the following description, taken in connection with the accompanying drawings forming part hereof, in which —

Figure 1 is a fragmentary view in elevation of refrigerator parts showing the same provided with a locking device embodying main features of my invention, with the door of the refrigerator shown in partly open position, and the locking device unlatched.

Figure 2 is a similar view with the locking device in latched position.

Figures 3 and 4 are respectively, enlarged, detached perspective views of the locking device of my present invention comprising the keeper member and the locking member.

Figures 5 and 6 are respectively, rear end views of the keeper and tongue members of the automatically actuating refrigerator lock, defining the particular arrangement of the same, and

Figures 7 and 8 are similar views from the opposite side of the respective keeper and tongue members, showing the structural arrangement of the same.

For the purpose of illustrating my invention I have shown in the accompanying drawings several forms thereof which are at present preferred by me, since the same have been found in practice to give satisfactory and reliable results, although it is to be understood that the various instrumentalities of which my invention consists can be variously arranged and organized and that my invention is not limited to the precise arrangement and organization of the instrumentalities as herein shown and described.

Referring to the drawings the reference letter a designates a refrigerator structure and a^1 the door thereof. There is shown applied to the structure a, the keeper member b, of my invention, which in structural arrangement, consists of a baseplate b^1, formed with apertures b^2 for the reception of screws, to adapt the same for being secured in place, adjacent to the door opening. The keeper plate b^3 is formed integral with the base plate b^1 and projects upwardly therefrom at substantially a right angle thereto. The keeper plate b^3 is provided with the rear and front downwardly converging concaved edges b^4 and b^5 respectively; meeting in the downwardly projecting nose b^6. The keeper plate b^3 is hollowed out at b^7 on its inner side and is provided with a laterally projecting pin b^8, formed integral therewith and having the convexed front surface b^9, forming a riding surface for a cam c^1, of the locking member c, to be presently fully explained. The laterally projecting pin b^8 of the keeper plate b^3 serves to encounter a cam c^1 of the latch member c when the door is closed, thereby causing the handle c^2 of said latch member c to swing into a horizontal locking position and hence causing the tongue c^7 thereof to be wedged upwardly against the rear concaved edge b^4 of the

keeper plate b^4, by the weight and momentum of the handle c^5, thereby to hold said tongue c^7 securely in such locked position until it is desired to open the door a', for any purpose.

The latch member c consists of a base plate c^6, perforated at c^8, for the reception of screws and provided with a right angular bearing bracket c^4, formed integral therewith, which is adapted to support the pivotal latch c^2. The pivotal latch c^2, carried by the pivot pin or rivet c^3, consists of the handle portion c^5 and the tongue c^7 extending in the opposite direction and in alinement therewith, and is also provided with the inclined concaved cam c' also formed integral therewith, as shown particularly in Figure 4.

The described arrangement of keeper and latch is such that by slamming of the door with the lever rod or handle in a substantially vertical position and with the cam c^1 thereof laterally projecting, the latter will contact with the pin b^9 of the keeper b, so that the handle b^5 will be deflected downwardly causing the tongue to enter the recess b^{10} behind the keeper plate b^3 at the same time the cam c^1 will ride onto the pin b^9, of the said keeper to impart momentum to the handle b^5 and thus to force the tongue c^7 into a wedging position in the recess b^{10} of said keeper thereby to hold the door securely against opening until a reversed movement of the lever rod which causes the cam to ride again over the pin b^9, of the keeper, and simultaneously therewith, causing the tongue c^7 to be withdrawn from the recess b^{10} of the keeper b. In this position, the door occupies an open relation with respect to the refrigerator for access thereto.

The fastener will close automatically, due to the cam action, whether the handle is in horizontal or perpendicular position. When in horizontal position the tongue c^7 rides the strike, or concave edge b^6, and the cam c^1 will strike the pin b^9 as the tongue reaches the nose b^6 or lower terminal of the front concaved edge b^6, and give it momentum to throw the tongue under the rear concaved edge b^4 of the keeper plate into recess b^{10}, closing the latch or fastener. When in perpendicular position the cam c^1 rides the pin b^9, giving the handle momentum to throw the tongue c^7 under the keeper plate b^3 into the recess b^{10}, again throwing the latch into locked position.

I am aware of Patent No. 1385102 dated July 19, 1921, and I disclaim the structure therein disclosed, as my invention is differentiated therefrom, since whereas the structure disclosed in said patent utilizes a pin function, but the pivotal latch c^2 carries a cam c^1 inclined to the pivot of said latch and adapted to coact with a pin b^9 carried by and laterally projecting from, the inner wall of the keeper plate b^3 thereby to swing the terminal tongue of the latch into the horizontal locking position; and to none of the constructions of the prior art do I herein make claim.

It will now be apparent that I have devised a novel and useful construction which embodies the features of advantage enumerated as desirable in the statement of the invention and the above description and while I have in the present instance shown and described the preferred embodiments thereof which have been found in practice to give satisfactory and reliable results, it is to be understood that the same are susceptible of modification in various particulars without departing from the spirit or scope of the invention or sacrificing any of its advantages.

Having thus described my invention what I claim as new and desire to secure by Letters Patent, is:—

1. In a device of the character stated a fixed structure having an opening, a door for closing said opening, a keeper having a pin projecting laterally from its inner wall and a rear cam riding surface and a bottom recessed portion, a locking member for said door comprising a pivotal handle having a projected tongue in substantial alignment with the handle, said handle having an upper cam arranged at an angle to said handle and tongue whereby closing of said door causes said cam to be engaged by said pin to tilt said handle and to cause said tongue to engage said bottom recessed portion to automatically lock said door.

2. In a device of the character stated a fixed structure having an opening, a door for closing said opening a keeper of integral structure having a pin projecting laterally from its inner wall, said pin having its outer wall substantially convexed, and a rear cam riding surface and a bottom recessed portion, a locking member for said door comprising a pivotal handle having a projected integral tongue in substantial alignment with the handle, said handle having an upper cam arranged at an angle to said handle and tongue and integral therewith whereby closing of said door causes said cam to be engaged by said convexed pin to tilt said handle and to cause said tongue to engage said bottom recessed portion to automatically lock said door.

3. In a device of the character stated, a keeper plate having a bottom front, down and rearwardly inclined cam edge and a

per cam carried thereby, inclined to the axis of the pivot of said latch member; said terminal tongue being adapted to ride downwardly along said front cam edge of said keeper plate to deflect said latch member into a substantially upright position and said tongue being adapted to interlock with said upright rear locking edge on said keeper plate, when said latch member is in a substantially horizontal position, and a laterally projecti wall of said ke coact with said by said latch m from a substant tal position, so tongue to interl edge of said kee

until it is desired to open the door a', for any purpose.

The latch member c consists of a base plate c^3, perforated at c^6, for the reception of screws and provided with a right angular bearing bracket c^4, formed integral therewith, which is adapted to support the pivotal latch c^5. The pivotal latch c^5, carried by the pivot pin or rivet c^3, consists of the handle portion c^2 and the tongue c^7 extending in the opposite direction and in alinement therewith, and is also provided with the inclined concaved cam c' also formed integral therewith, as shown particularly in Figure 4.

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I am aware of Patent No. 1385102 dated July 19, 1921, and I disclaim the structure therein disclosed, as my invention is differentiated therefrom, since whereas the structure disclosed in said patent utilizes a pin 12 carried by the latch arm 11, which coacts with an upper cam edge 18 of the keeper member 17; in my novel construction the upper edge of my keeper plate b^2 has no and adapted to coact with a pin b^9 carried by and laterally projecting from, the inner wall of the keeper plate b^2 thereby to swing the terminal tongue of the latch into the horizontal locking position; and to none of the constructions of the prior art do I hereinmake claim.

It will now be apparent that I have devised a novel and useful construction which embodies the features of advantage enumerated as desirable in the statement of the invention and the above description and while I have in the present instance shown and described the preferred embodiments thereof which have been found in practice to give satisfactory and reliable results, it is to be understood that the same are susceptible of modification in various particulars without departing from the spirit or scope of the invention or sacrificing any of its advantages.

Having thus described my invention what I claim as new and desire to secure by Letters Patent, is:—

1. In a device of the character stated a fixed structure having an opening, a door for closing said opening, a keeper having a pin projecting laterally from its inner wall and a rear cam riding surface and a bottom recessed portion, a locking member for said door comprising a pivotal handle having a projected tongue in substantial alignment with the handle, said handle having an upper cam arranged at an angle to said handle and tongue whereby closing of said door causes said cam to be engaged by said pin to tilt said handle and to cause said tongue to engage said bottom recessed portion to automatically lock said door.

2. In a device of the character stated a fixed structure having an opening, a door for closing said opening a keeper of integral structure having a pin projecting laterally from its inner wall, said pin having its outer wall substantially convexed, and a rear cam riding surface and a bottom recessed portion, a locking member for said door comprising a pivotal handle having a projected integral tongue in substantial alignment with the handle, said handle having an upper cam arranged at an angle to said handle and tongue and integral therewith whereby closing of said door causes said cam to be engaged by said convexed pin to tilt said handle and to cause said tongue to engage said bottom recessed portion to automatically lock said door.

3. In a device of the character stated, a keeper plate having a bottom front, down and rearwardly inclined cam edge and a rear substantially upright locking edge, a pivotally mounted latch member including a handle and a terminal tongue in substantial alignment with each other, and an up-

terminal tongue being adapted to ride downwardly along said front cam edge of said keeper plate to deflect said latch member into a substantially upright position and said tongue being adapted to interlock with said upright rear locking edge on said keeper plate, when said latch member is in a substantially horizontal position, and a

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It will now be apparent that I have devised a novel and useful construction which embodies the features of advantage enumerated as desirable in the statement of the invention and the above description and while I have in the present instance shown and described the preferred embodiments thereof which have been found in practice to give satisfactory and reliable results, it is to be understood that the same are susceptible of modification in various particulars without departing from the spirit or scope of the invention or sacrificing any of its advantages.

Having thus described my invention what I claim as new and desire to secure by Letters Patent, is:—

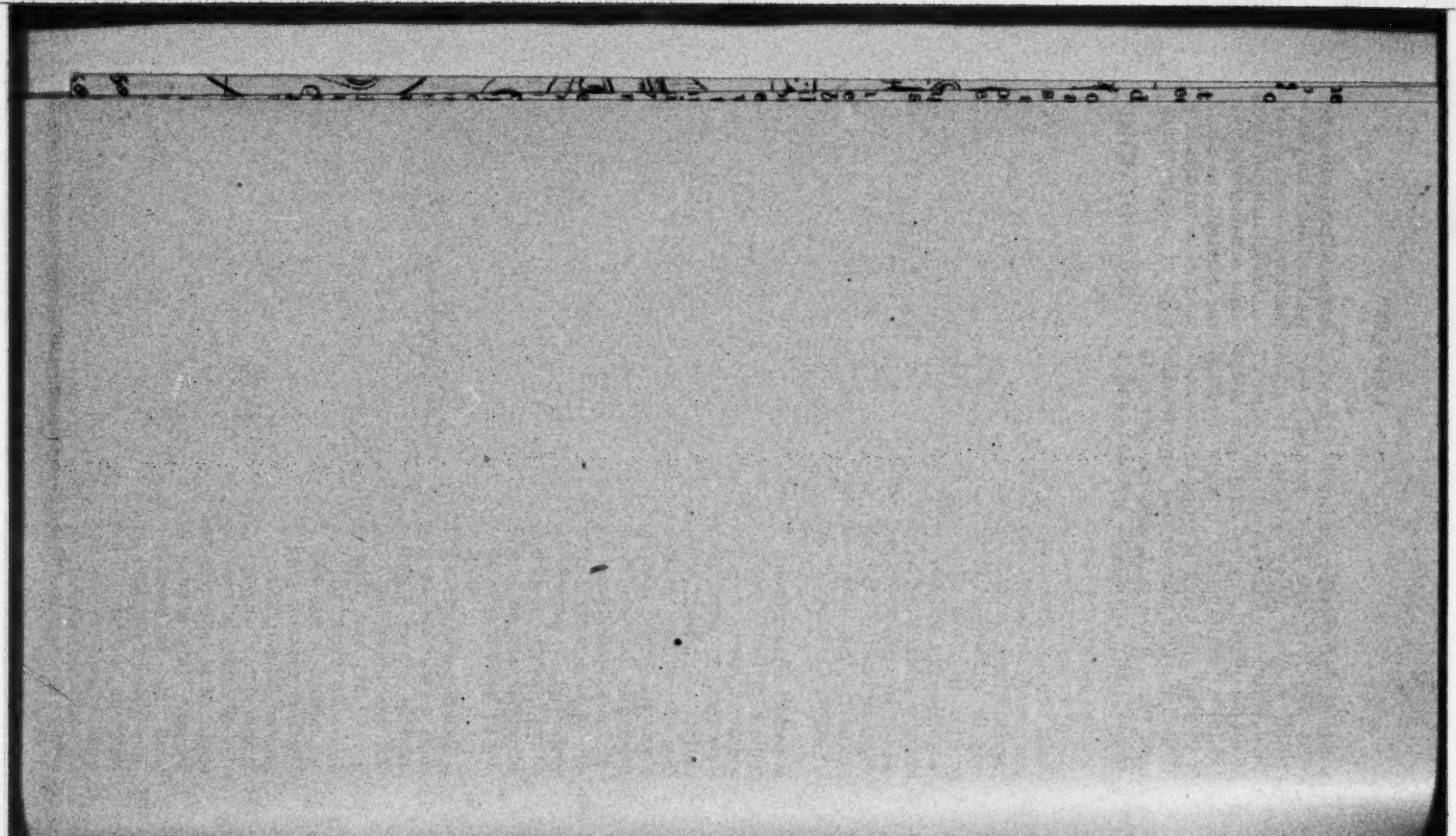
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2. In a device of the character stated a fixed structure having an opening, a door for closing said opening a keeper of integral structure having a pin projecting laterally from its inner wall, said pin having its outer wall substantially convexed, and a rear cam riding surface and a bottom recessed portion, a locking member for said door comprising a pivotal handle having a projected integral tongue in substantial alignment with the handle, said handle having an upper cam arranged at an angle to said handle and tongue and integral therewith whereby closing of said door causes said cam to be engaged by said convexed pin to tilt said handle and to cause said tongue to engage said bottom recessed portion to automatically lock said door.

3. In a device of the character stated, a keeper plate having a bottom front, down and rearwardly inclined cam edge and a

per cam carried thereby, inclined to the axis of the pivot of said latch member; said terminal tongue being adapted to ride downwardly along said front cam edge of said keeper plate to deflect said latch member into a substantially upright position and said tongue being adapted to interlock with said upright rear locking edge on said keeper plate, when said latch member is in a substantially horizontal position, and a laterally projecting pin carried by the inner wall of said keeper plate and adapted to coact with said upper inclined cam carried by said latch member to deflect the latter from a substantially upright to a horizontal position, so as to cause said terminal tongue to interlock with said rear locking edge of said keeper plate.

THOS. O. SCHRADER



DEFENDANT'S EXHIBIT No. 11.

U. S. Patent No. 702,185 to A. Charles.

No. 702,185. Patented June 10, 1902.

A. CHARLES.

LATCH.

(Application filed Jan. 28, 1901.)

(No Model.) 2 Sheets—Sheet 1.

Fig. 1.



Fig. 2.



Fig. 3.

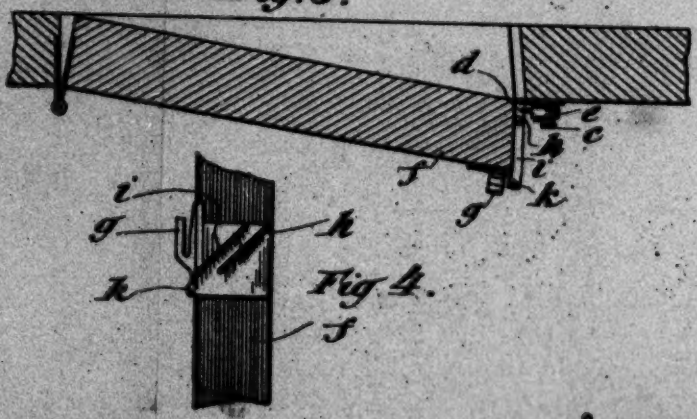
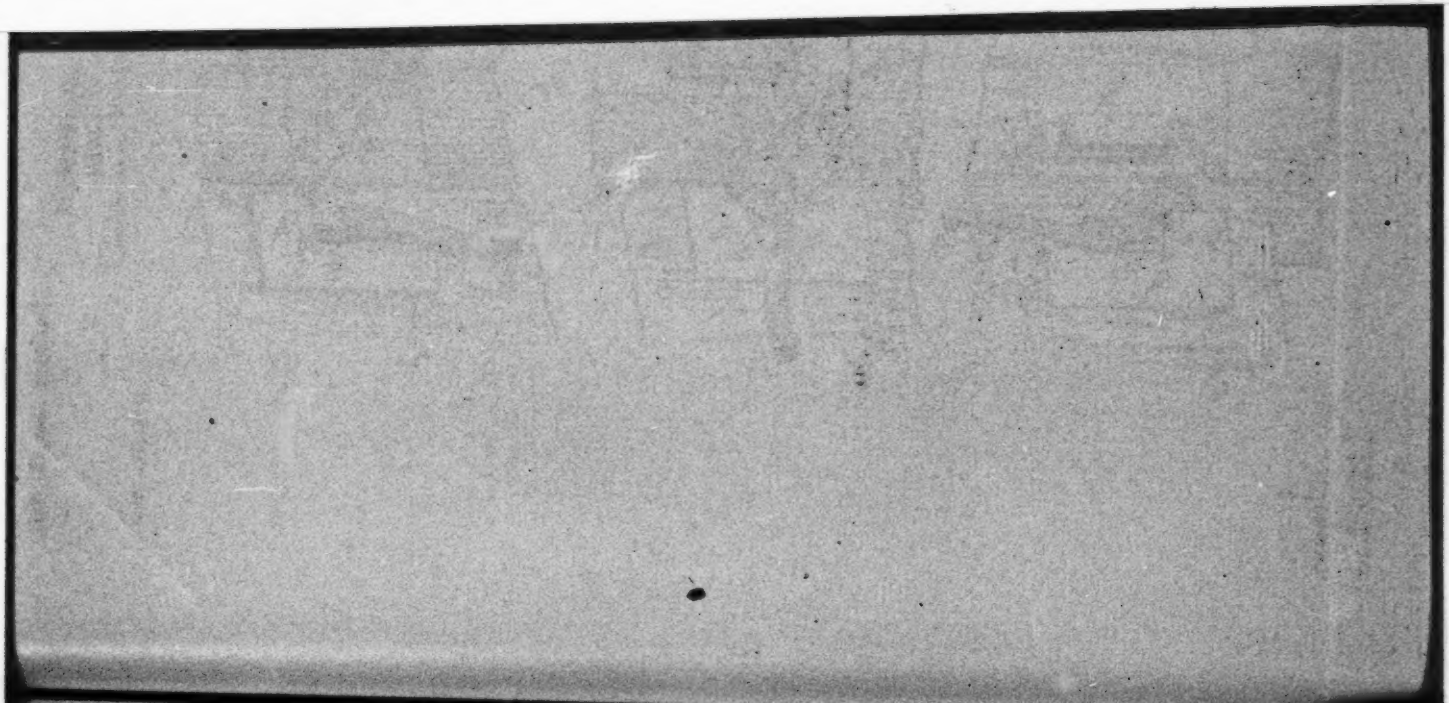


Fig 4.

Witnesses
Thomas Kilgorin
F. B. Thurber

Inventor
Antoine Charles
by Alexander & Co



LATCH.

(No Model.)

(Application filed Jan. 26, 1901.)

2 Sheets—Sheet 2.

Fig. 5.

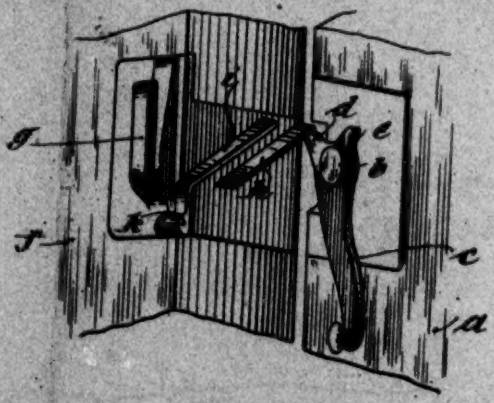


Fig. 6.

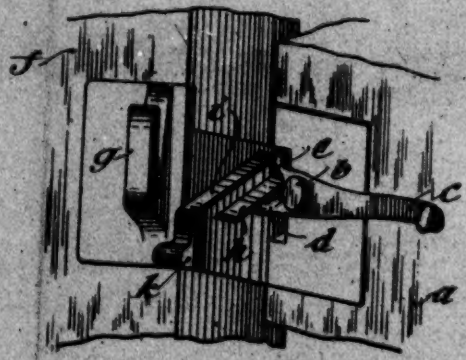
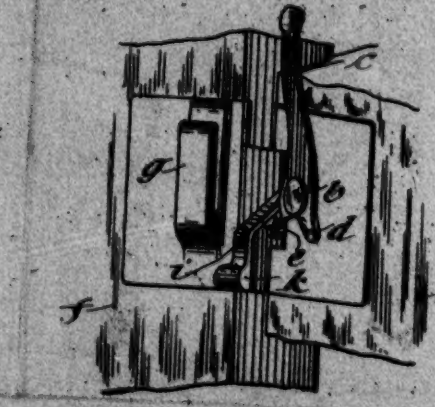


Fig. 7.



Witnesses
Thomas Kirkpatrick
H. C. Hazelhurst

Inventor
Antoine Charles
by Alexander & Co
Attorneys

UNITED STATES PATENT OFFICE.

ANTOINE CHARLES, OF LIEGE, BELGIUM.

LATCH.

SPECIFICATION forming part of Letters Patent No. 702,185, dated June 10, 1902.

Application filed January 28, 1901. Serial No. 45,049. (No model.)

To all whom it may concern:

Be it known that I, ANTOINE CHARLES, engineer, a citizen of Belgium, residing at Rue Lairesse No. 117, Liege, in the Kingdom of Belgium, have invented a certain new and useful Latch; and I do hereby declare the following to be a full, clear, and exact description of the invention, such as will enable others skilled in the art to which it appertains to make and use the same, reference being had to the accompanying drawings, forming part of this specification.

The present invention relates to automatic safety-latches, and is designed especially for the doors of railway-carriages.

The object of the invention is to provide a safety-latch supported on the door-jamb cooperating with guides on the door itself, which guides are arranged to coact with projections on the latch, so that in the closing movement of the door the latch is automatically operated in a sort of screw movement and automatically engages the latch-catch on the door.

The invention consists, in brief, of a pivoted latch provided with projections engaging inclined guides on the door, the projections on the latch coming successively in contact with said inclined guides in such a manner that a rotating action is given to the pivoted latch by the successive contact of said inclined guides with the respective projections on the latch.

The invention is illustrated in the accompanying drawings, in which—

Figure 1 represents a front view of a portion of a door and its supporting-casing, showing the latch in closed position. Fig. 2 is a similar view showing the latch in open position. Fig. 3 is a horizontal section showing the door partially open. Fig. 4 is a detail view of the guiding-plate and latch-catch attached to the door; and Figs. 5, 6, and 7 represent in perspective the parts in various positions during the course of operation.

In the drawings, *a* represents the door-jamb, to which is attached a suitable supporting-plate, upon which is pivoted on the pin or pivot *b* the locking-latch *c*, provided with a thumb-piece, as shown. This latch has preferably arranged at one end shoulders or offsets *d e*. The door is shown at *f* and is provided on the front side with an upwardly-opening latch-catch *g*, while to the edge of the door are attached inclined guides *h* and *i*, which parts, together with the latch-catch, are preferably arranged upon a common angle-iron. A stop *k* is also provided on said door to prevent the pivoted latch *c* when in its lowest position, as shown in Figs. 2 and 5, from throwing back against the door, thus preventing the opening of the same. When the door is closed, the pivoted latch lies in the usual manner in the latch-catch *g*; but when it is desired to open the door the latch is thrown by hand about its pivot *b* to the position shown in Figs. 2 and 5 and in which the stop *k* prevents too great a swing of the pivoted latch. The position of the shoulders *d* and *e* on the latch *c* is so chosen that the shoulder *d* on opening the door (see Fig. 3) impinges on the guides *h* and *i*, and therefore with its point projects somewhat over these guides. On closing the door, therefore, the shoulder *d* will pass under the guide *h*, which position is shown in Fig. 5, and in the further closing of the door the shoulder *d* slides on the inclined guide *h*, and because of the inclination thereof the latch *c* turns on its pivot *b* until the latch finally comes into the position shown in Fig. 6. Then the shoulder *d* passes under the guide-strip *i* and, sliding on this, continues the rotation of the latch *c*, when the shoulder *d* passes out of engagement with the guide *h*, the latch finally reaching the position shown in Fig. 7, and a very small further movement of the door suffices to allow the latch *c* to fall by gravity into the latch-catch *g*.

While, therefore, the opening of the door is performed manually in the ordinary manner when the door is shut, there takes place an automatic locking by means of the above-described device.

It will be noticed that the action of the guides *h* and *i* upon the respective offsets *d* and *e* is generally like that of two screw-threads with crossed axes.

Having thus described my invention, what I claim as new, and desire to secure by Letters Patent, is—

1. An automatic safety-catch for doors, comprising a pivoted latch, a latch-catch carried by the door, and means carried by said door for successively engaging and rotating said

latch and causing it to engage the catch; substantially as described.

2. An automatic safety-latch for doors, comprising a pivoted latch having a plurality of offsets, inclined guides carried by the door with which the offsets successively respectively engage, and a latch-catch on the door; substantially as described.

3. An automatic catch for doors comprising the pivoted latch *c*, having the offsets or lugs *d*, *e*, in combination with a door provided with inclined guides *h* and *i*, with which the offsets *d*, *e*, respectively successively engage, and a latch-catch *g*; substantially as described.

In testimony whereof I have signed this specification in the presence of two subscribing witnesses.

A. CHARLES.

Witnesses:
J. ERWINIE,
JEN. RUSTING.

DEFENDANT'S EXHIBIT No. 14.
File Wrapper and Contents, Letters Patent No. 1,385,-102 to Alexander F. Winters and Basil R. Crampton.

390

DEPARTMENT OF COMMERCE
UNITED STATES PATENT OFFICE

To all persons to whom these presents shall come, Greeting:

THIS IS TO CERTIFY that the annexed is a true copy from the records of this office of the File Wrapper and Contents, in the matter of the

Letters Patent of

Alexander F. Winters and Basil R. Crampton,

Number 1,385,102, Granted July 19, 1921,

for

— — Improvement in Latches.

IN TESTIMONY WHEREOF I have hereunto set my hand and caused the seal of the Patent Office to be affixed, at the City of Washington, this twenty-sixth day of March in the year of our Lord, one thousand nine hundred and twenty-seven and of the Independence of the United States of America the one hundred and fifty-first.

substantially as described.

3. An automatic catch for doors comprising the pivoted latch c, having the offsets or lugs d, e, in combination with a door provided with

A. CHARLES.

Witnesses:
J. ERWINIE,
JEN. RUSTING.

DEPARTMENT OF COMMERCE
UNITED STATES PATENT OFFICE

To all persons to whom these presents shall come, Greeting:

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Letters Patent of

Alexander P. Winters and Basil R. Crampton,

Number 1,385,102, Granted July 19, 1921,

for

Improvement in Latches.

IN TESTIMONY WHEREOF I have hereunto set my hand and caused the seal of the Patent Office to be affixed, at the City of Washington, this twenty-sixth day of March in the year of our Lord, one thousand nine hundred and twenty-seven and of the Independence of the United States of America the one hundred and fifty-first.

ATTEST: J. Ercolano
Chief of Division.

Thomas E. Robertson
Commissioner of Patents.

NUMBER (Series of 1915), 428891

1920
~~1918~~

(EX'R'S BOOK) 212

DIV. 20

PATENT No. 1385102 73

Name Alexander F. Winters and Basil R. Crampton

of Grand Rapids

County of

State of Michigan

Invention Latch

PARTS OF APPLICATION FILED.

	ORIGINAL	RENEWED
Petition	Dec 7, 1920	, 191
Affidavit	" ", 1920	, 191
Specification	" ", 1920	, 191
Drawing 2 sh	" ", 1920	, 191
Photo Copy	, 191	, 191
First Fee Cash $15	Dec 7, 1920	, 191
" " Cert.	, 191	, 191
Appl. filed complete	Dec 7, 1920	, 191
Examined and Passed for Issue	June 21, 1921	, 191
A. L. Wright.	Exr. Div. 20	Exr. Div.
Notice of Allowance	JUN 24 1921, 191 By Commissioner.	, 191 By Commissioner.
Final Fee Cash $20	June 22, 1921	, 191
" " Cert.	, 191	, 191
Patented		, 191

Division of App., No. ....., filed ....., 191

Attorney Frank E. Liverance Ja. Houseman Bldg. Grand Rapids Mich.

#2209

Serial No. 42889 Paper No. 1
Application.

Published by Munn & Co., Patent Attorneys, Grand Rapids

RECEIVED
DEC 1920
U.S. PAT. OFFICE

PETITION

To the Commissioner of Patents:

Your petitioners, Alexander F. Winters and Basil R. Crampton,
citizens
of the United States of America, residing at Grand Rapids
in the County of Kent *State of* Michigan
whose post-office address is C/o Winters & Stryker, Grand Rapids, Michigan,
pray that Letters Patent may be granted to them *for improvement in*
LATCH
as set forth in the annexed specification.

And they hereby appoint FRANK E. LIVERANCE, JR., ~~[illegible]~~ *of Grand Rapids, Michigan* their *Attorneys with full power of substitution and revocation, to prosecute this application, to make alterations and amendments therein, to sign the drawings, to receive the patent, and to transact all business in the Patent Office connected therewith.*

Signed at Grand Rapids *in the County of* Kent
and State of Michigan *this* day of 1920.

Inventor's full name Alexander F. Winters
Basil R. Crampton

SPECIFICATION.

To all Whom it may Concern:

BE IT KNOWN that We, Alexander F. Winters and Basil R. Crampton,
L.C.
citizens *of the United States of America, residing at* Grand Rapids,
in the County of Kent *and State of* Michigan,

DIV. 20 PATENT No. 1365162

Name Alexander F. Winters and Basil R. Crampton

of Grand Rapids

County of

State of Michigan

Invention Latch

PARTS OF APPLICATION FILED.

ORIGINAL		RENEWED
Petition	Dec 7, 1920	, 191
Affidavit	" ", 1920	, 191
Specification	" ", 1920	, 191
Drawing 2 sh	" ", 1920	, 191
Photo Copy	, 191	, 191
First Fee Cash $15	Dec 7, 1920	, 191
" " Cert.	, 191	, 191
Appl. filed complete	Dec 7, 1920	, 191
Examined and Passed for Issue	June 21, 1921	, 191
A. L. Wright.	Ex. Div. 20	Ex. Div.
Notice of Allowance	JUN 24 1921, 191 By Commissioner.	, 191 By Commissioner.
Final Fee Cash $20	June 22, 1921	, 191
" " Cert.	, 191	, 191
Patented		, 191

Attorney Frank E. Livernance, 7 Houseman Bldg, Grand Rapids Mich.

Associate Attorney

(No. of Claims Allowed 7) Print Claim 1 in O. G. (Cl 222-241)

Title as Allowed Latch

Division of App., No. , filed , 191

C.C.H.S.

To the Commissioner of Patents:

107

Your petitioners, Alexander F. Winters and Basil R. Crampton, citizens of the United States of America, residing at Grand Rapids in the County of Kent State of Michigan whose post-office address is C/o Winters & Stryker, Grand Rapids, Michigan, pray that Letters Patent may be granted to them for improvement in

LATCH

as set forth in the annexed specification.

And they hereby appoint FRANK E. LIVERANCE, JR., of Grand Rapids, Michigan their Attorneys, with full power of substitution and revocation, to prosecute this application, to make alterations and amendments therein, to sign the drawings, to receive the patent, and to transact all business in the Patent Office connected therewith.

Signed at Grand Rapids in the County of Kent and State of Michigan this day of 1920.

Inventor's full name { Alexander F. Winters
Basil R. Crampton

SPECIFICATION.

To all Whom it may Concern:

BE IT KNOWN that We, Alexander F. Winters and Basil R. Crampton, l.c. citizens of the United States of America, residing at Grand Rapids, in the County of Kent and State of Michigan, have invented certain new and useful improvements in

LATCHES; l.c.

and we do hereby declare the following to be a full, clear, and exact description of the invention, such as will enable others skilled in the art to which it appertains to make and use the same.

#2309.

This invention relates to a latch of the swinging lever type, particularly adapted for use on refrigerators though applicable in many other relations where a door is to be closed and held in closed position. The swinging lever latch, or as it is better known, the ~~condit~~ Condit latch, is pivotally connected at one end to the door jamb or casing, allowing the door to be opened when the latch is thrown to an upper vertical position, and coming down across the meeting edges of the casing and door when swung to horizontal position, engaging with a cam member on the door to wedge the door tightly shut. This latch is a very serviceable latch but is relatively hard to operate due to its attachment to the casing instead of the door, and the same is liable to drop to horizontal position in which case the door cannot be closed without first raising the lever to upper vertical position while, many times, the door is inadvertantly swung toward closed position and against the lever in its horizontal position with injury either to the lever or door or both. In the present invention, it is a primary object and purpose to provide a latch which may be pivotally connected to the door and which is automatically operated to engage with a retaining member or keeper fixed on the door casing when the door is closed irrespective of the vertical or horizontal position of the latch lever, working as well in the one case as the other. A further object of the invention is to construct a latch of few parts, whereby it may be economically made and which will be durable and efficient in service. Other objects and purposes will appear as understanding of the invention is had from the following description, taken in connection with the accompanying drawings, in which,

Figure 1 is a front elevation showing the latch in closed position and holding a door closed.

Fig. 2 is a side elevation thereof.

Fig. 3 is an under plan view of the latch, the door and adjacent portion of the casing therefor being in section.

Fig. 4 is a view similar to Fig. 1 showing the door approaching closed position with the swinging lever in vertical relation to the door.

Fig. 5 is a side elevation thereof.

Fig. 6 is a front elevation showing the action on the swinging lever as the door approaches closed position after said lever has been in horizontal position, and

Fig. 7 is a side view thereof.

Like reference characters refer to like parts in the different figures of the drawings.

The door 1 and the adjacent portion of the casing 2 against which the free vertical edge of the door comes in closing are shown fragmentarily, only enough being shown to disclose the attachment of the lever and keeper thereto. The lever is carried by the door. A base 3, attached to the door by screws 4 or equivalent connecting means has an integral outstanding post 5 from which, at the outer end an arm 6 extends over and paralleling the base. The lever 7 is placed between said arm and the base and a pivot pin 8 passed through the same, pivotally mounting the lever at a point between its ends. An arm 9 forming a part of the lever extends from the pivot and is adapted to cross the meeting edges of the door and casing when the door is closed and the lever in horizontal position, this arm passing under the keeper attached to the door casing. The under side of the arm 9 is formed at an angle as indicated at 10 the purpose of which will later appear.

In the opposite direction the lever extends from the pivot and is formed into a handle 11 set out a distance from the door to allow the passage of the fingers of the operator between

it and the door. A short distance from the pivot an arm 12 is formed integral with the lever, being located substantially at right angles to the arm 9. The under side of arm 12 when the lever is vertically positioned is formed with a rounded cam surface 13, as shown, the purpose of which will also appear later.

The keeper comprises a base 14 attached to the casing 2 by screws 15 or like fastening means from which a post 16 extends outwardly for a short distance terminating in a head 17 which is extended downwardly for a distance below the lower edge of the post. The head on its outer sides is formed with two curved surfaces 18 and 19 which come to a point substantially at the front and between the upper and lower ends of said head, while on its inner side it is cut upwardly and inwardly at a slight angle to the vertical, forming a wedging cam 20, as shown.

The latch lever may be thrown to upper position, as shown in Fig. 4, being stopped from going beyond such position by engagement of the arm 9 with the lower shoulder 5a made by post 5. It may also be carried to a horizontal position, being likewise stopped when it reaches such position by the upper shoulder 5b. When the door is moved toward closing position with the lever vertically located, the cam side 13 of arm 12 strikes against the curved upper side 18 of head 17, causing the lever to be automatically swung toward the horizontal, and bringing the arm 9 into place so as to pass under the lower point of the keeper head so that it may engage at its outer side against the wedging cam side 20 of the head. It is apparent that by giving the end of handle 11 a downward movement, the door will be wedged tightly shut as the arm 9 moves upwardly and against the incline 20. To open the door it is merely necessary to grasp handle 11 and turn it to upper position, releasing the door, and the door may be opened at the same time by pulling outwardly on the handle after arm 9 has disconnected

from the keeper.

If the lever has dropped to horizontal position while the door is open, the closure of the door and engagement of the lever with the keeper is accomplished by merely swinging the door shut, in which case, as shown in Figs. 6 and 7, the arm 9 strikes with its inclined cam side 10 against the lower curved side 19 of the head 17 of the keeper, causing the handle to be automatically turned toward vertical position. This movement continues until the arm 9 passes by the lower point of the keeper head 17 or, as usually occurs, the arm 12 comes into contact with the head at the upper side 18, whereupon the lever is actuated so as to bring the arm 9 under the depending portion of the keeper, the same as before described when closing the door with the lever in vertical position. In any case, the latch lever engages with the latch keeper when the door is closed irrespective of the position of the lever. This is a feature of merit in the invention and one of particular value from a practical standpoint when the latch is used on refrigerators.

This latch construction is very simple, consisting of but three parts and a pivot pin, all of which may be readily cast from metal or formed with proper dies from sheet metal. The mounting of the lever on the door is of value as use of one hand only is necessary for unlatching and drawing the door open. The ability to close the door and latch it automatically, irrespective of the position of the latch lever insures against injury to the latch or door and also insures that the door will be latched when it is swung shut. All of these features combined in the latch structure make it one of exceptional merit.

1. In combination, a door and a casing therefor, a keeper attached to the casing comprising a base, an outstanding post and a head at the outer portion of the post, said head depending below the post and formed with upper and lower curved outer sides coming substantially to a point and with an inner upwardly and inwardly inclined side, a member attached to the door comprising a base, an integral outstanding post projecting from the base and a laterally extending arm at the upper end of the post paralleling the base, and a latch lever pivotally mounted between its ends between the said arm and base of said member, said lever having one arm formed with an under cam side extending from the pivot and adapted to be engaged under the depending portion of the keeper, a handle portion extending in the opposite direction from the pivot and another arm projecting from the handle portion a distance from the pivot and lying substantially at right angles to the first arm of the lever and likewise being formed with an inner cam side, substantially as and for the purposes described.

2. In combination, a door and a casing therefor, a keeper attached to the casing including an outer head spaced from the casing and formed with upper and lower curved outer sides coming substantially to a point and with an inner upwardly and inwardly inclined side, a member secured to the door, and a latch lever pivotally mounted between its ends on said member, said lever having one arm extended from the pivot adapted to ride against the lower outer side of the keeper head when the door is closed with the lever in horizontal position to automatically turn the lever to bring said arm back of the head, a handle portion extending in the opposite direction from said pivot and a second arm projecting from the handle portion at an angle to the first arm and adapted to ride against the upper outer side of the keeper when the door is closed with the lever positioned vertically to throw the lever to horizontal position and automatically engage the first arm with the keeper back of said head,

3. In combination with a door and casing therefor, of a keeper attached to the casing and a latch lever pivotally connected to the door and engagable with the keeper to hold the door in closed position, of means on the keeper and means on the latch lever to engage with the keeper on the outer sides thereof to swing the lever into engagement with the keeper at the inner side thereof when the door is closed with the lever occupying either a vertical or a horizontal position, substantially as described.

4. In combination with a door and casing therefor, of a keeper attached to the casing and a latch lever pivotally connected to the door and engagable with the keeper to hold the door in closed position, of two arms on the latch lever one of which is engaged with an outer portion of the keeper when the door is moved to closing position to swing the lever from a vertical position to a horizontal position and engage the other arm under the keeper, and the other of which is engaged with a different outer portion of the keeper when the door is moved to closing position and the lever is horizontal to turn the lever upwardly toward vertical position or until said other arm passes under and engages with the keeper to hold the door closed, substantially as described.

5. In a latch of the character described, a supporting member adapted to be attached to a door, and a latch lever pivotally mounted between its ends thereon, said lever including one arm extending from the pivot, a handle portion extending in the opposite direction from the pivot, and a second arm extending from the handle portion ~~a short distance from~~ adjacent the pivot and in a direction substantially at right angles to the first arm, substantially as described.

6. A latch containing the elements in combination defined in claim 5, said arms on their inner sides being formed with cam surfaces, substantially as described.

7. A keeper for latches comprising a base, a post projecting outwardly from the base at the upper portion thereof, and a head to the post depending below the same and being substantially triangular in outline, having an upper and a lower outer side coming substantially to a point and an inner upwardly and inwardly inclined side, substantially as described.

8. In combination, a door and a casing therefor, a keeper attached to the casing, a latch lever pivotally mounted on the door between its ends, one end of the lever being formed into an operating handle and the other into a keeper engaging arm, a second arm projecting from the handle portion of the lever a short distance from its pivot and at an angle to the first arm, said keeper being formed at its outer sides for engagement with the respective arms when the lever is in horizontal and vertical positions, respectively, as the door is closed, to automatically operate the lever so that it will engage under the keeper when the door is entirely closed, substantially as described.

In testimony whereof we *affix* our *signature*s.

Alexander F. Winters
Basil R. Crampton

OATH.

STATE OF MICHIGAN, }
County of Kent } ss.

Alexander F. Winters and Basil R. Crampton,

*the above named petitioner*s, *being duly sworn depose and say that* they are *citizen*s *of the United States of America, and resident*s *of* Grand Rapids *in the County of* Kent *and State of* Michigan; *that* they *verily believe* themselves *to be the original, first and* joint *inventor*s *of the improvement in* LATCH *described and claimed in the annexed specification; that* they *do not know, and do not believe the same was ever known or used before* their *invention or discovery thereof, or patented or described in any printed publication in any country before* their *invention or discovery thereof, or more than two years prior to this application, or in public use or on sale in the United States for more than two years prior to this application; that said invention has not been patented in any country foreign to the United States on an application filed by* them *or* their *legal representatives or assigns more than twelve months prior to this application; and that no application for patent on said improvement has been filed by* them *or* their *legal representatives or assigns in any country foreign to the United States* ~~except as follows:~~

Alexander F. Winters
Basil R. Crampton

7. A keeper for latches comprising a base, a post projecting outwardly from the base at the upper portion thereof, and a head to the post depending below the same and being substantially triangular in outline, having an upper and a lower outer side coming substantially to a point and an inner upwardly and inwardly inclined side, substantially as described.

8. In combination, a door and a casing therefor, a keeper attached to the casing, a latch lever pivotally mounted on the door between its ends, one end of the lever being formed into an operating handle and the other into a keeper engaging arm, a second arm projecting from the handle portion of the lever a short distance from its pivot and at an angle to the first arm, said keeper being formed at its outer sides for engagement with the respective arms whom the lever is in horizontal and vertical positions, respectively, as the door is closed, to automatically operate the lever so that it will engage under the keeper when the door is entirely closed, substantially as described.

In testimony whereof we *affix* our *signatures*

Alexander F. Winters

Basil R. Crampton

OATH.

STATE OF MICHIGAN, }
County of Kent } *ss.*

Alexander F. Winters and Basil R. Crampton,

the above named petitioners, being duly sworn depose and say that they are *citizens of the United States of America, and residents of* Grand Rapids *in the County of* Kent *and State of* Michigan *; that* they *verily believe* themselves *to be the original, first and* joint *inventors of the improvement in*

LATCH

described and claimed in the annexed specification; that they *do not know, and do not believe the same was ever known or used before* their *invention or discovery thereof, or patented or described in any printed publication in any country before* their *invention or discovery thereof, or more than two years prior to this application, or in public use or on sale in the United States for more than two years prior to this application; that said invention has not been patented in any country foreign to the United States on an application filed by* them *or* their *legal representatives or assigns more than twelve months prior to this application; and that no application for patent on said improvement has been filed by* them *or* their *legal representatives or assigns in any country foreign to the United States* ~~except as follows:~~

Alexander F. Winters

Basil R. Crampton

Div. 30 Room 179 Ser. No. VW Paper No. 2

Address only "The Commissioner of Patents, Washington, D. C." and not any official by name.

All communications regarding this application should give the serial number, date of filing, title of invention, and name of the applicant.

DEPARTMENT OF THE INTERIOR

Wms

UNITED STATES PATENT OFFICE

WASHINGTON April 15, 1921

U. S. PATENT OFFICE
APR 15 1921
MAILED

Frank E. Livernance,
Houseman Bld'g,
Grand Rapids, Mich.

Please find below a communication from the EXAMINER in charge of the application of

Alexander F. Winters and Basil R. Crampton, for Latch, filed Dec. 7, 1920, Serial No. 428,891

Thomas E. Robertson
Commissioner of Patents.

Claim 7 does not patentably distinguish over the following patents:

Keil,	554,448,	Feb. 11, 1896,	(292-341)
Ward,	1,250,736,	Dec. 18, 1917,	(292-342)

and is rejected.

The remaining claims appear allowable.

In amending see the following art:

Dent,	670,506,	Mar. 26, 1901,	(292-341)
Hadka,	743,716,	Nov. 10, 1903, and	
Blye,	1,238,876,	Sept. 4, 1917,	(292-342).

Exr. Div. 30

4/21/21
10

JUN 14 1921 U.S. PATENT OFFICE

Serial No. 428,891 Paper No. 3.

a-

Alexander F. Winters and
Basil R. Crampton,
Ser. No. 428,891,
Filed Dec. 7, 1920,
Latch.

Div. 20;
Room 179.

PATENT OFFICE JUN 14 1921 DIVISION 20.

Hon. Commissioner of Patents,
Washington, D.C.

Sir:

In response to the Office action of April 15, 1921, in the above case, amendment is made as follows:

Claim 5, line 6, cancel "a short distance from" and substitute---adjacent---.

Cancel claim 7.

Remarks.

The rejected claim has been cancelled, primarily as the subject matter thereof is divisional when claimed in itself, and it is the intention of the inventors to file a divisional application thereon.

The amendment to claim 5 does not change the same in substance.

An early allowance is requested in view of the fact that no examination of any kind has to be made further.

Very respectfully,

WINTERS and CRAMPTON,

By Frank E. Latch Jr.
Attorney.

Div.30-LVW

ADDRESS ONLY
THE COMMISSIONER OF PATENTS,
WASHINGTON, D. C.

2-181

Serial No. 428,891

DEPARTMENT OF THE INTERIOR

UNITED STATES PATENT OFFICE

WASHINGTON June 21, 1921

U.S. PATENT OFFICE JUN 21 1921

Alexander F. Winters and Basil R. Crampton,

Sir: Your APPLICATION for a patent for an IMPROVEMENT in Latch

filed Dec. 7, 1920, has been examined and ALLOWED.

The final fee, TWENTY DOLLARS, must be paid not later than SIX MONTHS from the date of this present notice of allowance. If the final fee be not paid within that period, the patent on this application will be withheld, unless renewed with an additional fee of $15, under the provisions of Section 4897, Revised Statutes.

The office delivers patents upon the day of their date, and on which their term begins to run. The printing, photolithographing, and engrossing of the several patent parts, preparatory to final signing and sealing, will require about four weeks, and such work will not be undertaken until after payment of the necessary fee.

When you send the final fee you will also send, DISTINCTLY AND PLAINLY WRITTEN, the name of the INVENTOR, TITLE OF INVENTION, AND SERIAL NUMBER AS ABOVE GIVEN, DATE OF ALLOWANCE (which is the date of this circular), DATE OF FILING, and, if assigned, the NAMES OF THE ASSIGNEES.

If you desire to have the patent issue to ASSIGNEES, an assignment containing a REQUEST to that effect, together with the FEE for recording the same, must be filed in this office on or before the date of payment of final fee.

After issue of the patent, certified copies of the drawings and specifications may be purchased at the price of TEN CENTS EACH. The money should accompany the order. Postage stamps will not be received.

Final fees will NOT be received from other than the applicant, his assignee or attorney, or a party in interest as shown by the records of the Patent Office.

Respectfully,

Thomas E. Robertson

Commissioner of Patents.

Frank E. Liverance, Jr.,

Houseman Bld'g.,

Grand Rapids, Mich.

IN REMITTING THE FINAL FEE GIVE THE SERIAL NUMBER AT THE HEAD OF THIS NOTICE.

UNCERTIFIED CHECKS WILL NOT BE ACCEPTED.

20

2—327.1

MEMORANDUM

OF

FEE PAID AT UNITED STATES PATENT OFFICE.

(Be careful to give correct Serial No.)

Serial No. 428,891 June 22, 1921

INVENTOR:

Alexander F. Winters & Basil R. Crampton

PATENT TO BE ISSUED TO

Inventors

NAME OF INVENTION, AS ALLOWED:

Label

DATE OF PAYMENT:

June 22, 1921

FEE:

Final Payment Fee ($20.00)

DATE OF FILING:

Dec. 7, 1920

DATE OF CIRCULAR OF ALLOWANCE:

June 21, 1921

The Commissioner of Patents will please apply the accompanying fee as indicated above.

Frank E. Liverance, Jr
Attorney.

SEND PATENT TO

Frank E. Liverance, Jr
Houseman Bldg.
Grand Rapids, Mich

4—3315

Div. 32 Room 179

Address only "The Commissioner of Patents, Washington, D. C." and not any official by name.

2-554

Paper No. 4

All communications regarding this application should give the serial number, date of filing, date of invention, and name of the applicant.

DEPARTMENT OF THE INTERIOR
UNITED STATES PATENT OFFICE
WASHINGTON

EXAMINER'S AMENDMENT.

Please find below a communication from the ***EXAMINER*** *in charge of the application of*

Alexander F. Winters and Basil R. Crampton, Serial No. 428891, filed Dec 7, 1920 for Latch.

Commissioner of Patents.

In accordance with the provisions of Order No. 2308, dated March 12, 1917, which reads in part as follows:

* * * * * * *

Obvious informalities in the application may be corrected by the examiner, but said correction must be in the form of an amendment, approved by the Principal Examiner in writing, placed in the file, and made a part of the record. The changes specified in the amendment will be entered by the clerk in the regular way.

* * * * * * *

the changes, hereinafter specified, are made by the examiner in the application above identified.

Should these changes not be satisfactory to the applicant, appropriate amendment may be proposed under the provisions of Rule 78, provided the specification has not been printed.

The application has been amended as follows:

Page 1 line 5 change "condit" to Condit.

Page 3 line 31 change "this" to thus.

G. L. Wright
Ex. Div 20.

MAIL ROOM NOV 27 1925 U.S. PATENT

United States District Court

#5

Eastern *District of* Wisconsin.

HONORABLE COMMISSIONER OF PATENTS,
Washington, D. C.

SIR:

In compliance with the Act of February 18, 1922 (42 Stat. L. ....), you are advised that there was filed on the 23rd day of November, 1925, in this court an action, suit, or proceeding No. 1688 C.D., entitled:

Name Alexander F. Winters, et al., Plaintiff,

Address Grand Rapids, Michigan,

versus

Name Sanitary Refrigerator Company, Defendant,

Address Fond du Lac, Wisconsin.

brought upon the following patents:

	PATENT NO.	DATE OF PATENT	PATENTEE
1	1,385,102	Dec. 7, 1920	Alexander F. Winters and
2			Basil R. Crampton,
3			
4			
5			

In the above-entitled case, on the ..... day of ....., 192 , the following patents have been included by ..... (insert amendment, answer, cross bill, or other pleading):

	PATENT NO.	DATE OF PATENT	PATENTEE
1			
2			
3			
4			
5			

In the above-entitled case the following decision has been rendered or decree issued:

.....

.....

~~1920~~
1918

CONTENTS:

1. Application _____ papers.
2. Rej April 15 1921
3. Appeal A June 13 1921
4. Ass Amend't
5. Notice of Suit Nov. 27-1924
6. Notice of Suit Mar. 24-1926
7. Notice of C.C. of Appeals July 2 1927
8. Notice of Suit Aug. 3-1927
9. _____
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A. F. WINTERS AND B. R. CRAMPTON.

LATCH.

APPLICATION FILED DEC. 7, 1920.

1,385,102.

Patented July 19, 1921.

2 SHEETS—SHEET 1.

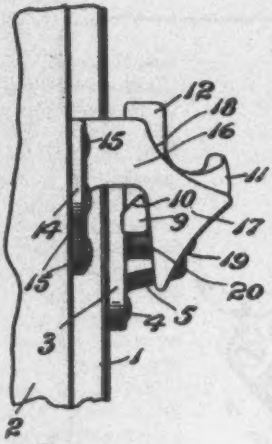


Fig. 2.

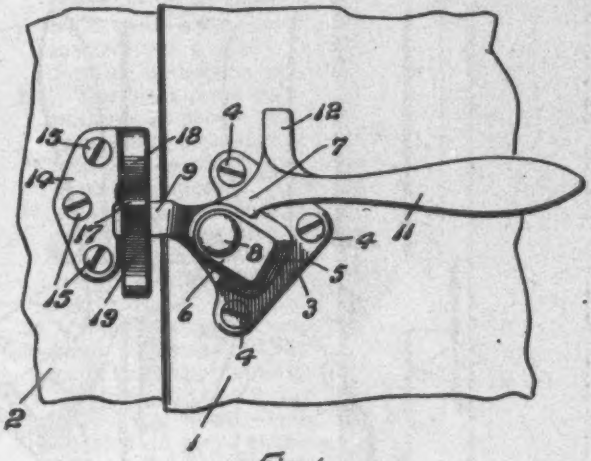


Fig. 1.

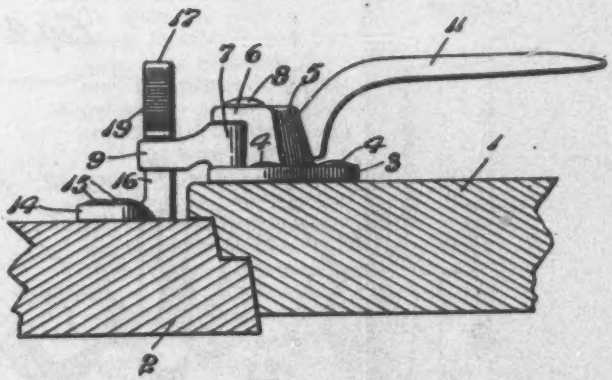


Fig. 3.

Inventors

Alexander F. Winters

Basil R. Crampton

By Frank E. Liverance, Jr.

Attorney

A. F. WINTERS AND B. R. CRAMPTON.

LATCH.

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2 SHEETS—SHEET 2.

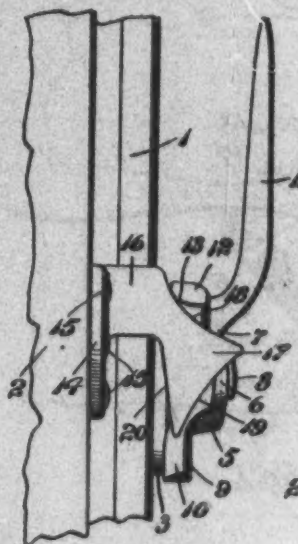


Fig. 5.

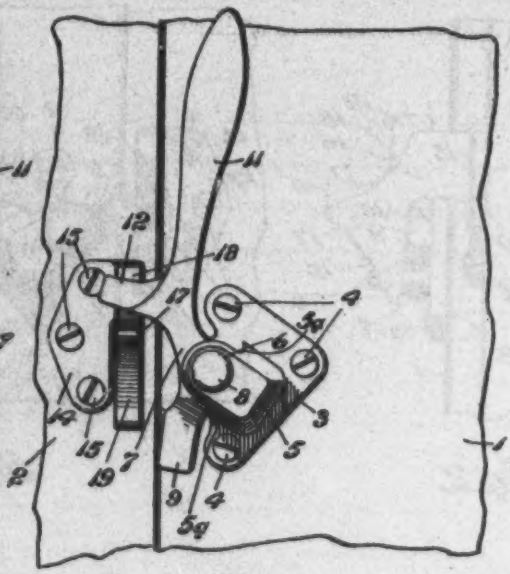


Fig. 4.

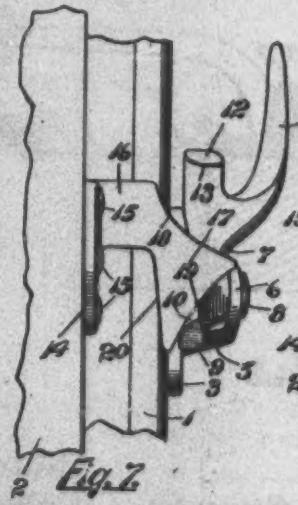


Fig. 7.

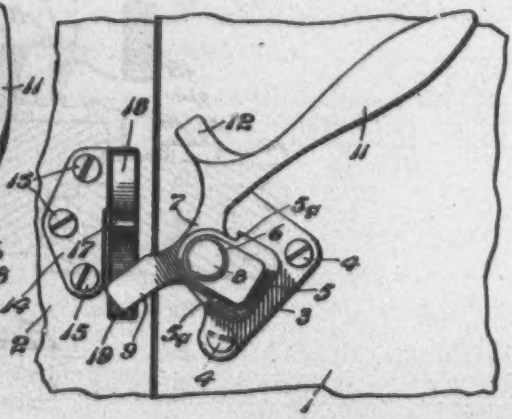


Fig. 6.

Inventors

Alexander F. Winters

Basil R. Crampton

By Frank E. Livermore Jr.

Attorney

UNITED STATES PATENT OFFICE.

ALEXANDER F. WINTERS AND BASIL R. CRAMPTON, OF GRAND RAPIDS, MICHIGAN.

LATCH.

1,385,102. Specification of Letters Patent. Patented July 19, 1921.

Application filed December 7, 1920. Serial No. 428,891.

To all whom it may concern:

Be it known that we, ALEXANDER F. WINTERS and BASIL R. CRAMPTON, citizens of the United States of America, residing at Grand Rapids, in the county of Kent and State of Michigan, have invented certain new and useful Improvements in Latches; and we do hereby declare the following to be a full, clear, and exact description of the invention, such as will enable others skilled in the art to which it appertains to make and use the same.

This invention relates to a latch of the swinging lever type, particularly adapted for use on refrigerators though applicable in many other relations where a door is to be closed and held in closed position. The swinging lever latch, or as it is better known, the Condit latch, is pivotally connected at one end to the door jamb or casing, allowing the door to be opened when the latch is thrown to an upper vertical position, and coming down across the meeting edges of the casing and door when swung to horizontal position, engaging with a cam member on the door to wedge the door tightly shut. This latch is a very serviceable latch but is relatively hard to operate due to its attachment to the casing instead of the door, and the same is liable to drop to horizontal position in which case the door cannot be closed without first raising the lever to upper vertical position while, many times, the door is inadvertently swung toward closed position and against the lever in its horizontal position with injury either to the lever or door or both. In the present invention, it is a primary object and purpose to provide a latch which may be pivotally connected to the door and which is automatically operated to engage with a retaining member or keeper fixed on the door casing when the door is closed irrespective of the vertical or horizontal position of the latch lever, working as well in the one case as the other. A further object of the invention is to construct a latch of few parts, whereby it may be economically made and which will be durable and efficient in service. Other objects and purposes will appear as understanding

Fig. 2 is a side elevation thereof.

Fig. 3 is an under plan view of the latch, the door and adjacent portion of the casing therefor being in section.

Fig. 4 is a view similar to Fig. 1 showing the door approaching closed position with the swinging lever in vertical relation to the door.

Fig. 5 is a side elevation thereof.

Fig. 6 is a front elevation showing the action on the swinging lever as the door approaches closed position after said lever has been in horizontal position, and

Fig. 7 is a side view thereof.

Like reference characters refer to like parts in the different figures of the drawings.

The door 1 and the adjacent portion of the casing 2 against which the free vertical edge of the door comes in closing are shown fragmentarily, only enough being shown to disclose the attachment of the lever and keeper thereto. The lever is carried by the door. A base 3, attached to the door by screws 4 or equivalent connecting means has an integral outstanding post 5 from which, at the outer end an arm 6 extends over and paralleling the base. The lever 7 is placed between said arm and the base and a pivot pin 8 passed through the same, pivotally mounting the lever at a point between its ends. An arm 9 forming a part of the lever extends from the pivot and is adapted to cross the meeting edges of the door and casing when the door is closed and the lever in horizontal position, this arm passing under the keeper attached to the door casing. The under side of the arm 9 is formed at an angle as indicated at 10 the purpose of which will later appear.

In the opposite direction the lever extends from the pivot and is formed into a handle 11 set out a distance from the door to allow the passage of the fingers of the operator between it and the door. A short distance from the pivot an arm 12 is formed integral with the lever, being located substantially at right angles to the arm 9. The under side of arm 12 when the lever is vertically positioned is formed with a rounded cam sur-

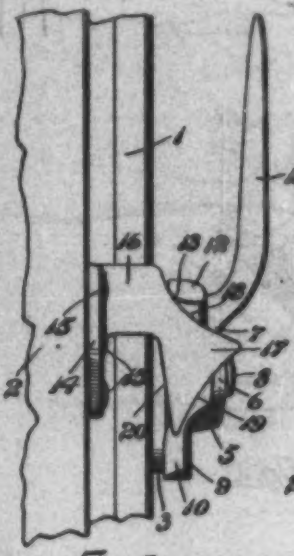


Fig. 5.

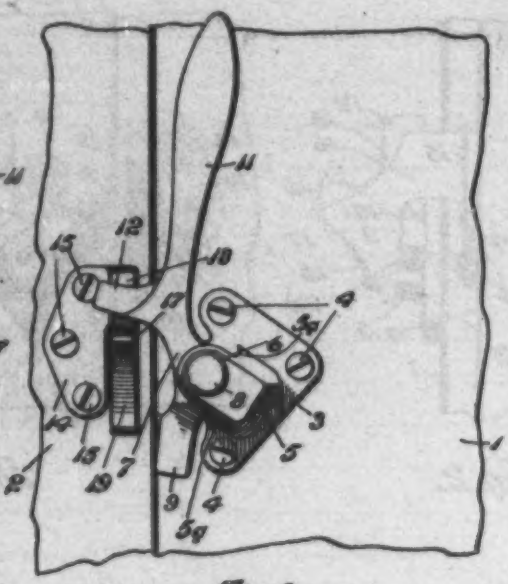


Fig. 4.

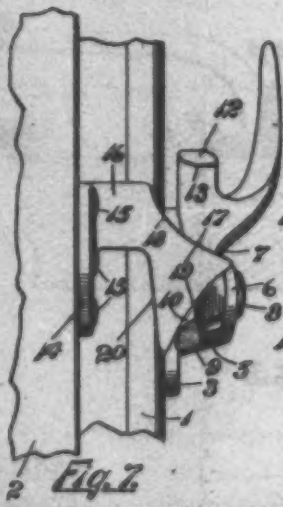


Fig. 7.

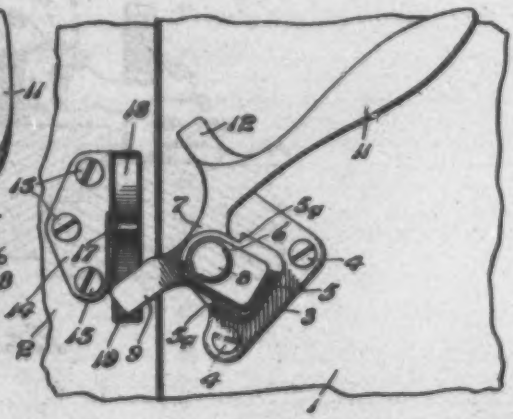


Fig. 6.

Inventors
Alexander F. Winters
Basil R. Crompton
By Frank E. Linnane Jr.
Attorney

Application filed December 7, 1920. Serial No. 428,891.

To all whom it may concern:

Be it known that we, ALEXANDER F. WINTERS and BASIL R. CRAMPTON, citizens of the United States of America, residing at Grand Rapids, in the county of Kent and State of Michigan, have invented certain new and useful Improvements in Latches; and we do hereby declare the following to be a full, clear, and exact description of the invention, such as will enable others skilled in the art to which it appertains to make and use the same.

This invention relates to a latch of the swinging lever type, particularly adapted for use on refrigerators though applicable in many other relations where a door is to be closed and held in closed position. The swinging lever latch, or as it is better known, the Condit latch, is pivotally connected at one end to the door jamb or casing, allowing the door to be opened when the latch is thrown to an upper vertical position, and coming down across the meeting edges of the casing and door when swung to horizontal position, engaging with a cam member on the door to wedge the door tightly shut. This latch is a very serviceable latch but is relatively hard to operate due to its attachment to the casing instead of the door, and the same is liable to drop to horizontal position in which case the door cannot be closed without first raising the lever to upper vertical position while, many times, the door is inadvertently swung toward closed position and against the lever in its horizontal position with injury either to the lever or door or both. In the present invention, it is a primary object and purpose to provide a latch which may be pivotally connected to the door and which is automatically operated to engage with a retaining member or keeper fixed on the door casing when the door is closed irrespective of the vertical or horizontal position of the latch lever, working as well in the one case as the other. A further object of the invention is to construct a latch of few parts, whereby it may be economically made and which will be durable and efficient in service. Other objects and purposes will appear as understanding of the invention is had from the following description, taken in connection with the accompanying drawings, in which,

Figure 1 is a front elevation showing the latch in closed position and holding a door closed.

Fig. 2 is a side elevation thereof.

Fig. 3 is an under plan view of the latch, the door and adjacent portion of the casing therefor being in section.

Fig. 4 is a view similar to Fig. 1 showing the door approaching closed position with the swinging lever in vertical relation to the door.

Fig. 5 is a side elevation thereof.

Fig. 6 is a front elevation showing the action on the swinging lever as the door approaches closed position after said lever has been in horizontal position, and

Fig. 7 is a side view thereof.

Like reference characters refer to like parts in the different figures of the drawings.

The door 1 and the adjacent portion of the casing 2 against which the free vertical edge of the door comes in closing are shown fragmentarily, only enough being shown to disclose the attachment of the lever and keeper thereto. The lever is carried by the door. A base 3, attached to the door by screws 4 or equivalent connecting means has an integral outstanding post 5 from which, at the outer end an arm 6 extends over and paralleling the base. The lever 7 is placed between said arm and the base and a pivot pin 8 passed through the same, pivotally mounting the lever at a point between its ends. An arm 9 forming a part of the lever extends from the pivot and is adapted to cross the meeting edges of the door and casing when the door is closed and the lever in horizontal position, this arm passing under the keeper attached to the door casing. The under side of the arm 9 is formed at an angle as indicated at 10 the purpose of which will later appear.

In the opposite direction the lever extends from the pivot and is formed into a handle 11 set out a distance from the door to allow the passage of the fingers of the operator between it and the door. A short distance from the pivot an arm 12 is formed integral with the lever, being located substantially at right angles to the arm 9. The under side of arm 12 when the lever is vertically positioned is formed with a rounded cam surface 13, as shown, the purpose of which will also appear later.

The keeper comprises a base 14 attached to the casing 2 by screws 15 or like fastening means from which a post 16 extends outwardly for a short distance terminating in a

ead 17 which is extended downwardly for a istance below the lower edge of the post. he head on its outer sides is formed with wo curved surfaces 18 and 19 which come to point substantially at the front and be- ween the upper and lower ends of said head, hile on its inner side it is cut upwardly and nwardly at a slight angle to the vertical, orming a wedging cam 20, as shown.

The latch lever may be thrown to upper osition, as shown in Fig. 4, being stopped rom going beyond such position by engage- ent of the arm 9 with the lower shoulder made by post 5. It may also be carried to horizontal position, being likewise stopped hen it reaches such position by the upper houlder 5ª. When the door is moved oward closing position with the lever verti- ally located, the cam side 13 of arm 12 trikes against the curved upper side 18 of ead 17, causing the lever to be automati- ally swung toward the horizontal, and ringing the arm 9 into place so as to pass nder the lower point of the keeper head o that it may engage at its outer side gainst the wedging cam side 20 of the head. t is apparent that by giving the end of handle 11 a downward movement, the door ill be wedged tightly shut as the arm 9 oves upwardly and against the incline 20. o open the door it is merely necessary to grasp handle 11 and turn it to upper posi- ion, thus releasing the door, and the door may be opened at the same time by pulling outwardly on the handle after arm 9 has dis- connected from the keeper.

If the lever has dropped to horizontal po- sition while the door is open, the closure of the door and engagement of the lever with the keeper is accomplished by merely swing- ing the door shut, in which case, as shown in Figs. 6 and 7, the arm 9 strikes with its in- clined cam side 10 against the lower curved side 19 of the head 17 of the keeper, causing the handle to be automatically turned toward vertical position. This movement continues until the arm 9 passes by the lower point of the keeper head 17 or, as usually occurs, the arm 12 comes into contact with the head at the upper side 18, whereupon the lever is actuated so as to bring the arm 9 under the depending portion of the keeper, the same as before described when closing the door with the lever in vertical position. In any case, the latch lever engages with the latch keeper when the door is closed irrespective of the position of the lever. This is a fea- ture of merit in the invention and one of door is of value as use of one hand only is necessary for unlatching and drawing the door open. The ability to close the door and latch it automatically, irrespective of the position of the latch lever insures against in- jury to the latch or door and also insures that the door will be latched when it is swung shut. All of these features combined in the latch structure make it one of excep- tional merit.

We claim:

1. In combination, a door and a casing therefor, a keeper attached to the casing comprising a base, an outstanding post and a head at the outer portion of the post, said head depending below the post and formed with upper and lower curved outer sides coming substantially to a point and with an inner upwardly and inwardly inclined side, a member attached to the door comprising a base, an integral outstanding post project- ing from the base and a laterally extending arm at the upper end of the post paralleling the base, and a latch lever pivotally mount- ed between its ends between the said arm and base of said member, said lever having one arm formed with an under cam side ex- tending from the pivot and adapted to be engaged under the depending portion of the keeper, a handle portion extending in the opposite direction from the pivot and an- other arm projecting from the handle por- tion a distance from the pivot and lying substantially at right angles to the first arm of the lever and likewise being formed with an inner cam side, substantially as and for the purposes described.

2. In combination, a door and a casing therefor, a keeper attached to the casing in- cluding an outer head spaced from the cas- ing and formed with upper and lower curved outer sides coming substantially to a point and with an inner upwardly and inwardly inclined side, a member secured to the door, and a latch lever pivotally mounted between its ends on said member, said lever having one arm extended from the pivot adapted to ride against the lower outer side of the keeper head when the door is closed with the lever in horizontal position to automati- cally turn the lever to bring said arm back of the head, a handle portion extending in the opposite direction from said pivot and a second arm projecting from the handle portion at an angle to the first arm and adapted to ride against the upper outer side of the keeper when the door is closed with the lever positioned vertically to throw the

door and engageable with the keeper to hold the door in closed position, of means on the keeper and means on the latch lever to engage with the keeper on the outer sides thereof to swing the lever into engagement with the keeper at the inner side thereof when the door is closed with the lever occupying either a vertical or a horizontal position, substantially as described.

4. In combination with a door and casing therefor, of a keeper attached to the casing and a latch lever pivotally connected to the door and engageable with the keeper to hold the door in closed position, of two arms on the latch lever one of which is engaged with an outer portion of the keeper when the door is moved to closing position to swing the lever from a vertical position to a horizontal position and engage the other arm under the keeper, and the other of which is engaged with a different outer portion of the keeper when the door is moved to closing position and the lever is horizontal to turn the lever upwardly toward vertical position or until said other arm passes under and engages with the keeper to hold the door closed, substantially as described.

5. In a latch of the character described, a supporting member adapted to be attached to a door, and a latch lever pivotally mounted between its ends thereon, said lever including one arm extending from the pivot, a handle portion extending in the opposite direction from the pivot, and a second arm extending from the handle portion adjacent the pivot and in a direction substantially at right angles to the first arm, substantially as described.

6. A latch containing the elements in combination defined in claim 5, said arms on their inner sides being formed with cam surfaces, substantially as described.

7. In combination, a door and a casing therefor, a keeper attached to the casing, a latch lever pivotally mounted on the door between its ends, one end of the lever being formed into an operating handle and the other into a keeper engaging arm, a second arm projecting from the handle portion of the lever a short distance from its pivot and at an angle to the first arm, said keeper being formed at its outer sides for engagement with the respective arms when the lever is in horizontal and vertical positions, respectively, as the door is closed, to automatically operate the lever so that it will engage under the keeper when the door is entirely closed, substantially as described.

In testimony whereof we affix our signatures.

ALEXANDER F. WINTERS.
BASIL R. CRAMPTON.

tween the upper and lower ends of said head, while on its inner side it is cut upwardly and inwardly at a slight angle to the vertical, forming a wedging cam 20, as shown.

The latch lever may be thrown to upper position, as shown in Fig. 4, being stopped from going beyond such position by engagement of the arm 9 with the lower shoulder 5^a made by post 5. It may also be carried to a horizontal position, being likewise stopped when it reaches such position by the upper shoulder 5^a. When the door is moved toward closing position with the lever vertically located, the cam side 13 of arm 12 strikes against the curved upper side 18 of head 17, causing the lever to be automatically swung toward the horizontal, and bringing the arm 9 into place so as to pass under the lower point of the keeper head so that it may engage at its outer side against the wedging cam side 20 of the head. It is apparent that by giving the end of handle 11 a downward movement, the door will be wedged tightly shut as the arm 9 moves upwardly and against the incline 20. To open the door it is merely necessary to grasp handle 11 and turn it to upper position, thus releasing the door, and the door may be opened at the same time by pulling outwardly on the handle after arm 9 has disconnected from the keeper.

If the lever has dropped to horizontal position while the door is open, the closure of the door and engagement of the lever with the keeper is accomplished by merely swinging the door shut, in which case, as shown in Figs. 6 and 7, the arm 9 strikes with its inclined cam side 10 against the lower curved side 19 of the head 17 of the keeper, causing the handle to be automatically turned toward vertical position. This movement continues until the arm 9 passes by the lower point of the keeper head 17 or, as usually occurs, the arm 12 comes into contact with the head at the upper side 18, whereupon the lever is actuated so as to bring the arm 9 under the depending portion of the keeper, the same as before described when closing the door with the lever in vertical position. In any case, the latch lever engages with the latch keeper when the door is closed irrespective of the position of the lever. This is a feature of merit in the invention and one of particular value from a practical standpoint when the latch is used on refrigerators.

This latch construction is very simple, consisting of but three parts and a pivot pin, all of which may be readily cast from metal or formed with proper dies from sheet metal. The mounting of the lever on the position of the latch lever insures against injury to the latch or door and also insures that the door will be latched when it is swung shut. All of these features combined in the latch structure make it one of exceptional merit.

We claim:

1. In combination, a door and a casing therefor, a keeper attached to the casing comprising a base, an outstanding post and a head at the outer portion of the post, said head depending below the post and formed with upper and lower curved outer sides coming substantially to a point and with an inner upwardly and inwardly inclined side, a member attached to the door comprising a base, an integral outstanding post projecting from the base and a laterally extending arm at the upper end of the post paralleling the base, and a latch lever pivotally mounted between its ends between the said arm and base of said member, said lever having one arm formed with an under cam side extending from the pivot and adapted to be engaged under the depending portion of the keeper, a handle portion extending in the opposite direction from the pivot and another arm projecting from the handle portion a distance from the pivot and lying substantially at right angles to the first arm of the lever and likewise being formed with an inner cam side, substantially as and for the purposes described.

2. In combination, a door and a casing therefor, a keeper attached to the casing including an outer head spaced from the casing and formed with upper and lower curved outer sides coming substantially to a point and with an inner upwardly and inwardly inclined side, a member secured to the door, and a latch lever pivotally mounted between its ends on said member, said lever having one arm extended from the pivot adapted to ride against the lower outer side of the keeper head when the door is closed with the lever in horizontal position to automatically turn the lever to bring said arm back of the head, a handle portion extending in the opposite direction from said pivot and a second arm projecting from the handle portion at an angle to the first arm and adapted to ride against the upper outer side of the keeper when the door is closed with the lever positioned vertically to throw the lever to horizontal position and automatically engage the first arm with the keeper back of said head, substantially as described.

3. In combination with a door and casing therefor, of a keeper attached to the casing and a latch lever pivotally connected to the

thereof to swing the lever into engagement with the keeper at the inner side thereof when the door is closed with the lever occupying either a vertical or a horizontal position, substantially as described.

4. In combination with a door and casing therefor, of a keeper attached to the casing and a latch lever pivotally connected to the door and engageable with the keeper to hold the door in closed position, of two arms on the latch lever one of which is engaged with an outer portion of the keeper when the door is moved to closing position to swing the lever from a vertical position to a horizontal position and engage the other arm under the keeper, and the other of which is engaged with a different outer portion of the keeper when the door is moved to closing position and the lever is horizontal to turn the lever upwardly toward vertical position or until said other arm passes under and engages with the keeper to hold the door closed, substantially as described.

5. In a latch of the character described, a supporting member adapted to be attached to a door, and a latch lever pivotally mounted between its ends thereon, said lever including the pivot and in a direction substantially at right angles to the first arm, substantially as described.

6. A latch containing the elements in combination defined in claim 5, said arms on their inner sides being formed with cam surfaces, substantially as described.

7. In combination, a door and a casing therefor, a keeper attached to the casing, a latch lever pivotally mounted on the door between its ends, one end of the lever being formed into an operating handle and the other into a keeper engaging arm, a second arm projecting from the handle portion of the lever a short distance from its pivot and at an angle to the first arm, said keeper being formed at its outer sides for engagement with the respective arms when the lever is in horizontal and vertical positions, respectively, as the door is closed, to automatically operate the lever so that it will engage under the keeper when the door is entirely closed, substantially as described.

In testimony whereof we affix our signatures.

ALEXANDER F. WINTERS.
BASIL R. CRAMPTON.

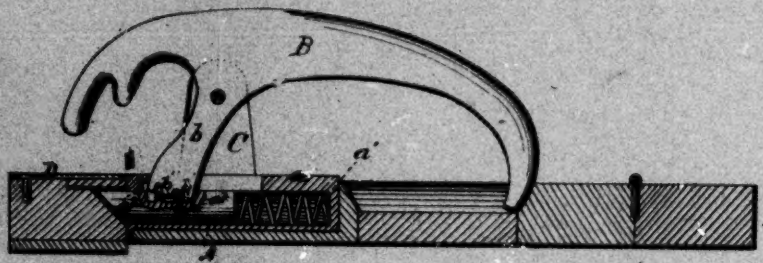
DEFENDANT'S EXHIBIT No. 15.

U. S. Patent No. 138,112 to J. Ambrun and E. Olfermann.

J. AMBRUN & E. OLFERMANN.

Door-Latch Handles.

No. 138,112. Patented April 22, 1873.



Witnesses.

Jos. C. Hutchinson

J. H. Hunter

Inventors.

J. Ambrun & E. Olfermann

Edson Brothers

UNITED STATES PATENT OFFICE.

JULIUS AMBRUN AND ERNST OLFERMANN, OF LEAVENWORTH, KANSAS.

IMPROVEMENT IN DOOR-LATCH HANDLES.

Specification forming part of Letters Patent No. **138,112**, dated April 22, 1873; application filed March 15, 1873.

To all whom it may concern:

Be it known that we, JULIUS AMBRUN and ERNST OLFERMANN, residing in Leavenworth, in the county of Leavenworth and State of Kansas, have invented a new and useful Improvement in Door-Bolts, of which the following is a full, clear, and exact description, reference being had to the annexed drawing, in which is represented a view of our invention, with the lever in elevation and the bolt in section, the device being adjusted to a door set in a frame, which represents the upper surface of an ice-box or refrigerator.

This invention relates to that class of door-fastenings in which a sliding bolt is used; and the nature thereof consists in combining with such a bolt a lever or handle of such construction as to enable the bolt to be withdrawn from the socket or mortise in the door-jamb, and also to act as a pry to assist in opening the door, substantially as hereinafter more fully set forth.

To enable others to make and use our invention, we will proceed to describe it.

The sliding bolt A is confined within a cast-metal case, *a*, with lateral and end flanges, through which fastenings are inserted for securing the case to the door. The rear end of bolt A is pressed by a coiled spring, a^1, inclosed by the case *a*, and its upper surface is constructed with teeth a^2. B is a lever or handle, which is supplied upon its lower side with an arm, *b*, having teeth b^1, which take into the teeth a^2 of the bolt A for operating or throwing the latter inwardly. The lever B is fulcrumed upon posts or supports C, fastened to the top of the bolt-case *a* in any known way. The forward end of the lever B is caused to project or extend to a point opposite the door-jamb, and then curved or bent toward the same within a short distance thereof, as shown in the drawing. The object of this construction is to enable the lever or handle to act upon the door-jamb so as to pry the door open as the handle is grasped in unbolting the door.

This device can be used to great advantage in connection with ice-box and refrigerator doors.

To prevent the lever defacing or tearing the door-jamb in prying the door open, a metallic plate, D, is applied to the jamb. The rear arm of the lever is prolonged to enable it to be easily grasped and give it purchase.

Having thus fully described our invention, what we claim, and desire to secure by Letters Patent, is—

The combination, with the sliding bolt A, of the lever or handle B *b*, of such construction as to act upon the door-jamb and pry the door open when the bolt is thrown in or withdrawn from the jamb, substantially as specified.

In testimony whereof we have signed the foregoing specification in presence of two subscribing witnesses.

JULIUS AMBRUN.
ERNST OLFERMANN.

Witnesses:
GEORGE SCHMITH,
JOHN BAUM.

DEFENDANT'S EXHIBIT No. 16.

U. S. Patent No. 62,078 to J. D. Simmons.

J. D. Simmons,

Sash Holder.

No. 62,078. Patented Feb. 12, 1867.

Fig: 2.



Fig: 1.



Witnesses:

A. Y. Coleman

Charles Alexander

Inventor:

J. D. Simmons

per

Alexander & Mason

Attorneys

United States Patent Office.

J. D. SIMMONS, OF QUINCY, ILLINOIS.

Letters Patent No. 62,078, *dated February* 12, 1867.

IMPROVED WINDOW-FASTENER.

The Schedule referred to in these Letters Patent and making part of the same.

TO ALL WHOM IT MAY CONCERN:

Be it known that I, J. D. SIMMONS, of the town of Quincy, county of Adams, and State of Illinois, have invented certain new and useful improvements in "Window-Fasteners," or Supporters, and do hereby declare that the following is a full, clear, and exact description thereof, reference being had to the accompanying drawings, and the letters of reference marked thereon, making a part of this specification.

Figure 1 represents a vertical section.

Figure 2 represents a side view.

In the annexed drawings, A represents a metallic plate, having its edges turned at right angles, and two ears *m*, formed thereby near the top. This plate is made of any suitable length, and of a width so as to correspond with the thickness of the edge of the window sash. This plate has an opening in front of the ears *m*, to allow the curved back of the eccentric to pass. Secured to the ears by means of a pivot, *a*, is the eccentric or lever B. This device is made of metal, and in the form more fully shown in fig. 1, and, when in its natural position, extends beyond the face or side of the plate A, through its opening heretofore described. D represents a spring, which is connected to the plate A, near its lower end, and extends along the inner side thereof to the eccentric B, and under one end of the same. Connected to this spring, a short distance beneath the end of the eccentric, is a metal bar, *b*. This bar is secured to the springs at right angles, and passes through a small opening made in the plate for the purpose of catching in an opening made in the window frame, to prevent strain on the eccentric, and support the window in its required position. X represents a slot, cut near the top of the eccentric. This acts upon a corresponding notch made in the window frame, and supports the window when the sash fits snugly against the frame. When there is some "play" in the window, the slot X does not come in contact with the frame, but the curved back, by its peculiar shape and construction, is pressed against the frame by the spring, and effectually supports the window.

In the operation of this device, it is laced in an opening cut in the edge of the side of the window frame, and so that its face will be even with the edge or face of the frame. When the window is to be elevated, the handle *y* of the eccentric is elevated, (as shown in fig. 2,) which brings the curve of the said eccentric from against the side of the window, forcing the spring backwards, where it is caught by a wing, Z, formed in the eccentric. The window is then forced upwards to the height desired, and the handle let fall, which throws the curve against the frame, and supports the window.

Having thus fully described my invention, what I claim as new, and desire to secure by Letters Patent, is—

The eccentric lever B, provided with the notch X, and the lug or wing Z, for the purpose of stopping the spring and preventing strain upon the same, in combination with the plate A, formed as described, and the spring D, provided with bar *b*, the whole arranged and used as and for the purpose specified.

As evidence that I claim the foregoing, I have hereunto set my hand in the presence of two witnesses.

J. D. SIMMONS.

Witnesses:

WILLIAM E. AVISE,

W. M. BIRD.

DEFENDANT'S EXHIBIT No. 17.

U. S. Patent No. 934,253 to P. C. Wiest.

P. C. WIEST.

ANTIRATTLER FOR WINDOW SASHES.

APPLICATION FILED MAY 27, 1909.

934,253.

Patented Sept. 14, 1909

Fig. 1.

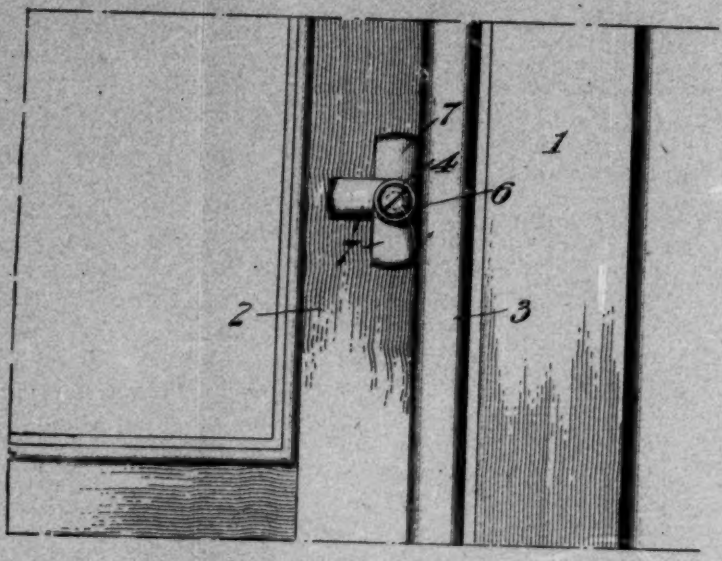
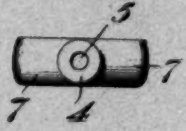


Fig. 2.



Fig. 3.



WITNESSES

T. L. Mockabee

Peter C. Wiest,
INVENTOR

Peter C. Wiest

UNITED STATES PATENT OFFICE.

PETER C. WIEST, OF YORK, PENNSYLVANIA.

ANTIRATTLER FOR WINDOW-SASHES.

934,253. Specification of Letters Patent. Patented Sept. 14, 1909.

Application filed May 27, 1909. Serial No. 498,674.

To all whom it may concern:

Be it known that I, PETER C. WIEST, a citizen of the United States, residing at York, in the county of York and State of Pennsylvania, have invented a certain new and useful Antirattler for Window-Sashes, of which the following is a specification, reference being had therein to the accompanying drawing.

This invention relates to antirattlers and fasteners for window sashes, the object in view being to provide a simple, cheap and practical device of the character referred to which may be readily carried in the pocket and quickly and easily applied in its position of use by persons having no special skill in the use of tools, and which, when in place, may be adjusted in such relation to a window sash and one of the window stops as to effectually prevent rattling of the sash and also prevent the ready movement of the sash in an attempt to force the same open.

With the above and other objects in view, the nature of which will fully appear as the description proceeds, the invention consists in the novel construction, combination and arrangement of parts herein fully described, illustrated and claimed.

In the accompanying drawings:—Figure 1 is an elevation of a sufficient portion of a window sash and frame to illustrate the application of the present invention thereto. Fig. 2 is a detail view of the device, *per se*. Fig 3 is a detail view of the device in slightly modified form.

Referring to the drawings, 1 designates a window frame, 2 a sash, and 3 one of the window stops, said parts being of the ordinary construction and arrangement.

The antirattler and fastener comprises a central body or hub 4 which is provided with a central opening 5 for the reception of a fastener such as a screw 6, by means of which the device may be secured to a sash as shown in Fig. 1, the said screw acting as a pivot upon and around which the device is adapted to be turned for a purpose hereinafter described.

Projecting radially outward from the body or hub 4 is a plurality of wings 7 of suitable length to project one at a time between the stop 3 and the adjacent face of the window sash. In Fig. 2, three of such wings are shown, while in Fig. 3 two of such wings are illustrated. The number of these wings may be varied at will without departing from the principle of the invention. Each of the wings 7 is substantially wedge-shaped in cross section or in other words is thicker at one edge than the other in order that it may be wedged in between the stop and sash to take up all lost motion and lobseness and prevent the sash from rattling. To increase the utility and usefulness of the device, the wings are of different thicknesses as clearly indicated in Figs. 2 and 3, the thinnest wing being used where there is only a slight space between the sash and stop and the thickest wing being brought into use where there is a considerable space between the parts referred to, it being understood that any desired wing may be brought into use by turning the device as a whole upon its pivot until the proper wing is forced between the sash and stop.

In addition to its function as an antirattler, the device also acts as a fastener to prevent the raising of the sash by an unauthorized person.

The device may be readily removed from the sash when no longer needed and a number of the devices may be conveniently carried in the pocket.

I claim:—

A device of the class described, comprising a rotatable hub, and a plurality of wings radiating therefrom each wedge-shaped in cross section and varying in thickness one from another.

In testimony whereof I affix my signature in presence of two witnesses.

PETER C. WIEST.

Witnesses:
ROBERT S. SPANGLER,
ANDREW J. BRENNEMAN.

DEFENDANT'S EXHIBIT No. 18.

U. S. Patent No. 1,022,872 to E. Raaths.

E. RAATHS.

GATE LATCH.

APPLICATION FILED OCT. 7, 1911.

1,022,872.

Patented Apr. 9, 1912.

Fig. 1.

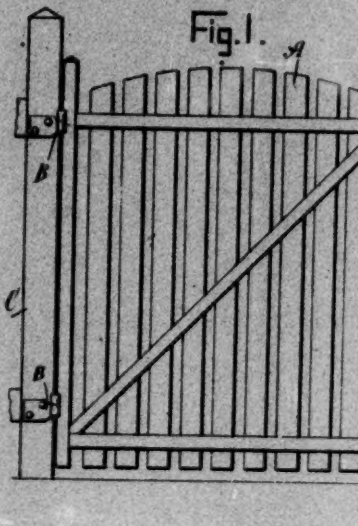


Fig. 2.

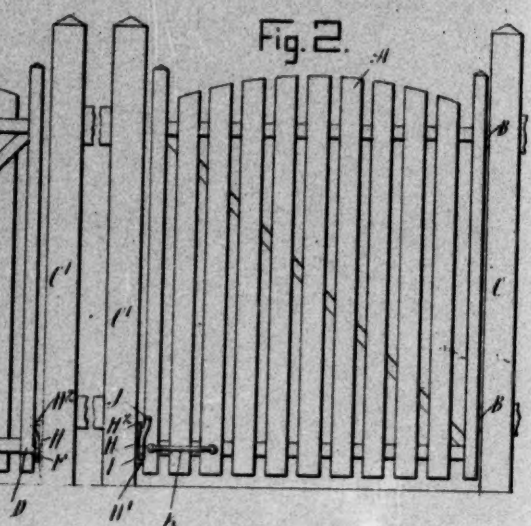
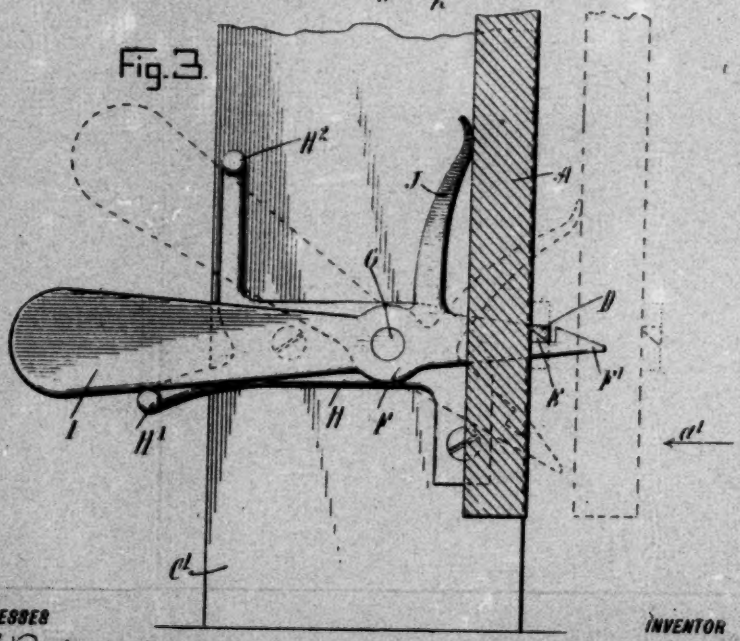


Fig. 3.



WITNESSES

C. K. Reichenbach.

INVENTOR

Ernest Raaths

BY

UNITED STATES PATENT OFFICE.

ERNEST RAATHS, OF ANGELICA, WISCONSIN, ASSIGNOR OF ONE-HALF TO ERNST H. BRAMSCHREIBER, OF ZACHOW, WISCONSIN.

GATE-LATCH.

1,022,872. Specification of Letters Patent. Patented Apr. 9, 1912.

Application filed October 7, 1911. Serial No. 653,384.

To all whom it may concern:

Be it known that I, ERNEST RAATHS, a citizen of the United States, and a resident of the town of Angelica, in the county of Shawano and State of Wisconsin, have invented a new and Improved Gate-Latch, of which the following is a full, clear, and exact description.

The object of the invention is to provide a new and improved gate latch arranged to permit conveniently opening or closing and locking the gate without the use of the hands, and to prevent hogs and cattle from opening the gate.

For the purpose mentioned, use is made of a latch lever fulcrumed on the gate post and having a notch for engagement with a keeper on the gate, the said latch lever also having an integral push arm adapted to engage the gate and swing the same open on imparting an opening movement to the latch lever.

A practical embodiment of the invention is represented in the accompanying drawings forming a part of this specification, in which similar characters of reference indicate corresponding parts in all the views.

Figure 1 is a face view of one side of the gate provided with the improved gate latch; Fig. 2 is a similar view of the other face of the gate provided with the gate latch; and Fig. 3 is an enlarged transverse section of the same.

The gate A on which the improved gate latch is used is connected by hinges B to a gate post C and on the free end of the gate A and near the bottom thereof is arranged a keeper D adapted to be engaged by a notch E formed in a latch lever F extending transversely and fulcrumed on a pivot G held on a latch plate H screwed or otherwise fastened to the inner side of the gate post C adjacent the free end of the gate A. The latch lever F is provided with a weighted arm I normally resting on a stop H' formed on the latch plate H, and the upward swinging movement of the weighted arm I is limited by a stop H² spaced from the stop H' and likewise forming part of the latch plate H. The latch lever F is further provided with an upwardly-extending bears against the face of the gate A, as will be readily understood by reference to Fig. 3, while the notch E is in engagement with the keeper D. A loop K is attached to the face of the gate A at the side opposite the one carrying the keeper D, the said loop being preferably located near the free end of the gate A and near the lower end thereof, as plainly indicated in Fig. 2. A person coming in the direction of the arrow *a'* and desiring to open the gate A needs only to press with one foot on the forwardly-projecting terminal F' of the latch lever F so as to swing the latch lever F downward and thereby disengage the notch E from the keeper D to unlock the gate. A further downward swinging movement of the latch lever F causes the push arm J to push the gate A open so that the person can walk through the opening between the gate posts. A person after passing through the open gate A engages one foot with the loop K and pulls the gate shut, it being understood that the latch lever F, after being relieved of pressure by the foot of the person as previously described, immediately swings back to normal position, as indicated in Fig. 3, and when the gate A is swung shut, as mentioned, the beveled top of the terminal F' slides under the keeper D, thus imparting a slight downward swinging motion to the lever F until the notch E registers with the keeper D, at which time the latch lever F is swung upward to its normal position by the action of the weighted arm I. The gate A is now again locked. A person coming in the inverse direction of the arrow *a'* lifts with his foot the weighted arm I so as to swing the latch lever F downward with a view to disengage the notch E from the keeper D and to cause the arm J to push the gate A open, as indicated in dotted lines in Fig. 3, to allow the person to walk through the open gate when in the inverse direction of the arrow *a'*. After having passed through the open gateway, it is only necessary for the person to give a return push to the gate A to cause the latch lever F to re-engage the keeper D in the manner above described.

From the foregoing it will be seen that

APPLICATION FILED OCT. 7, 1911.

1,022,872. **Patented Apr. 9, 1912.**

Fig. 1.

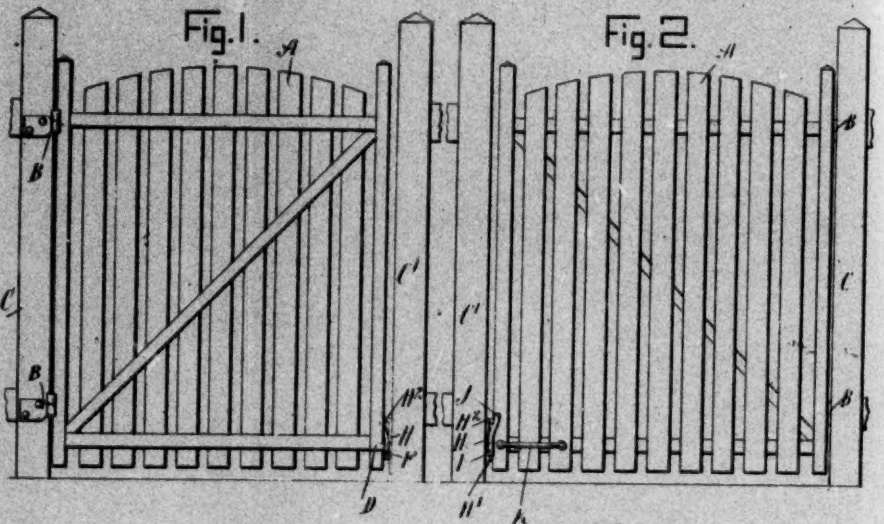
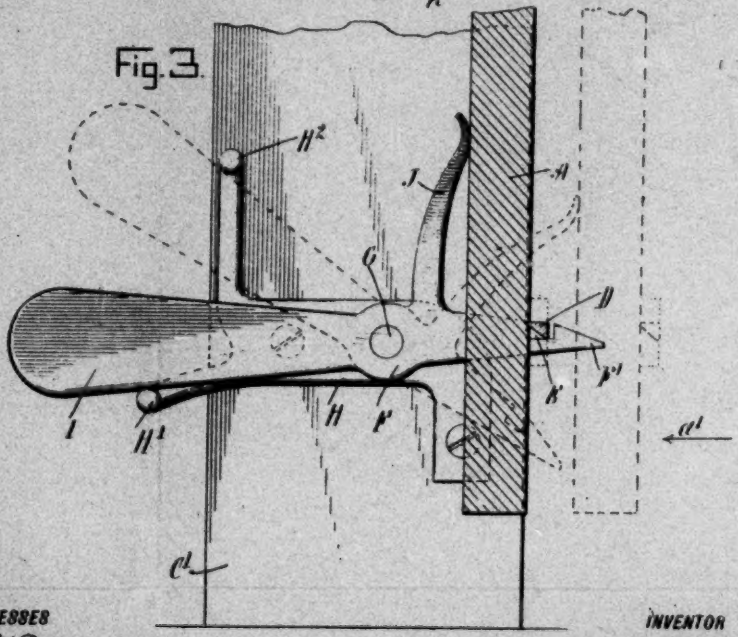


Fig. 2.

Fig. 3.



WITNESSES

C. F. Parkenbach.

Rud. Hoch Jr.

INVENTOR

Ernest Raaths

BY Munn & Co.

ATTORNEYS

GATE-LATCH.

1,022,872. Specification of Letters Patent. Patented Apr. 9, 1912.

Application filed October 7, 1911. Serial No. 653,384.

To all whom it may concern:

Be it known that I, ERNEST RAATHS, a citizen of the United States, and a resident of the town of Angelica, in the county of Shawano and State of Wisconsin, have invented a new and Improved Gate-Latch, of which the following is a full, clear, and exact description.

The object of the invention is to provide a new and improved gate latch arranged to permit conveniently opening or closing and locking the gate without the use of the hands, and to prevent hogs and cattle from opening the gate.

For the purpose mentioned, use is made of a latch lever fulcrumed on the gate post and having a notch for engagement with a keeper on the gate, the said latch lever also having an integral push arm adapted to engage the gate and swing the same open on imparting an opening movement to the latch lever.

A practical embodiment of the invention is represented in the accompanying drawings forming a part of this specification, in which similar characters of reference indicate corresponding parts in all the views.

Figure 1 is a face view of one side of the gate provided with the improved gate latch; Fig. 2 is a similar view of the other face of the gate provided with the gate latch; and Fig. 3 is an enlarged transverse section of the same.

The gate A on which the improved gate latch is used is connected by hinges B to a gate post C and on the free end of the gate A and near the bottom thereof is arranged a keeper D adapted to be engaged by a notch E formed in a latch lever F extending transversely and fulcrumed on a pivot G held on a latch plate H screwed or otherwise fastened to the inner side of the gate post C′ adjacent the free end of the gate A. The latch lever F is provided with a weighted arm I normally resting on a stop H′ formed on the latch plate H, and the upward swinging movement of the weighted arm I is limited by a stop H² spaced from the stop H′ and likewise forming part of the latch plate H. The latch lever F is further provided with an upwardly-extending arm J adapted to engage the face of the gate A opposite the one carrying the keeper D, so that when the gate A is in a closed position the free end of the push arm J bears against the face of the gate A, as will be readily understood by reference to Fig. 3, while the notch E is in engagement with the keeper D. A loop K is attached to the face of the gate A at the side opposite the one carrying the keeper D, the said loop being preferably located near the free end of the gate A and near the lower end thereof, as plainly indicated in Fig. 2. A person coming in the direction of the arrow *a′* and desiring to open the gate A needs only to press with one foot on the forwardly-projecting terminal F′ of the latch lever F so as to swing the latch lever F downward and thereby disengage the notch E from the keeper D to unlock the gate. A further downward swinging movement of the latch lever F causes the push arm J to push the gate A open so that the person can walk through the opening between the gate posts. A person after passing through the open gate A engages one foot with the loop K and pulls the gate shut, it being understood that the latch lever F, after being relieved of pressure by the foot of the person as previously described, immediately swings back to normal position, as indicated in Fig. 3, and when the gate A is swung shut, as mentioned, the beveled top of the terminal F′ slides under the keeper D, thus imparting a slight downward swinging motion to the lever F until the notch E registers with the keeper D, at which time the latch lever F is swung upward to its normal position by the action of the weighted arm I. The gate A is now again locked. A person coming in the inverse direction of the arrow *a′* lifts with his foot the weighted arm I so as to swing the latch lever F downward with a view to disengage the notch E from the keeper D and to cause the arm J to push the gate A open, as indicated in dotted lines in Fig. 3, to allow the person to walk through the open gate when in the inverse direction of the arrow *a′*. After having passed through the open gateway, it is only necessary for the person to give a return push to the gate A to cause the latch lever F to re-engage the keeper D in the manner above described.

From the foregoing it will be seen that the gate latch shown and described is very simple and durable in construction and composed of comparatively few parts, not liable easily to get out of order. It will also be

noticed that the gate is normally securely locked in position and cannot be opened by hogs or cattle, and a person coming in either direction can readily open the gate without the use of the hands.

Having thus described my invention, I claim as new and desire to secure by Letters Patent:

1. In combination with a swing gate and gate post, of a keeper fixed on the gate, a latch plate fixed on the gate post and provided with spaced stops, a latch lever fulcrumed on the said latch plate and provided with a notch adapted to engage the said keeper, the said latch lever having a weighted arm for engagement with the said stops and the latch lever having a push arm for engagement with the gate when the notch end of the latch lever is swung downward.

2. In combination with a swing gate and gate post, of a keeper on the gate, and a latch lever fulcrumed on the gate post and having a notch for engagement with the said keeper, the said latch lever also having an integral push arm adapted to engage the gate and swing the same open on imparting an opening movement to the latch lever.

3. In combination with a swing gate and gate post, a keeper fixed on the gate, a latch plate fixed on the gate post and provided with spaced stops, a latch lever fulcrumed on the said latch plate and provided with a notch adapted to engage the said keeper, the said latch lever having a weighted arm for engagement with the said stops and the latch lever having a push arm for engagement with the gate when the notch end of the latch lever is swung downward, and a loop fixed on the said gate at the side at which the said weighted arm is arranged.

In testimony whereof I have signed my name to this specification in the presence of two subscribing witnesses.

ERNEST RAATHS.

Witnesses:
R. C. Wendt.
J. E. Lutsey.

DEFENDANT'S EXHIBIT No. 19.

U. S. Patent No. 1,250,736 to A. D. Ward.

A. D. WARD.

REFRIGERATOR DOOR LOCK.

APPLICATION FILED FEB. 1, 1917.

1,250,736.

Patented Dec. 18, 1917.

Fig. 1.

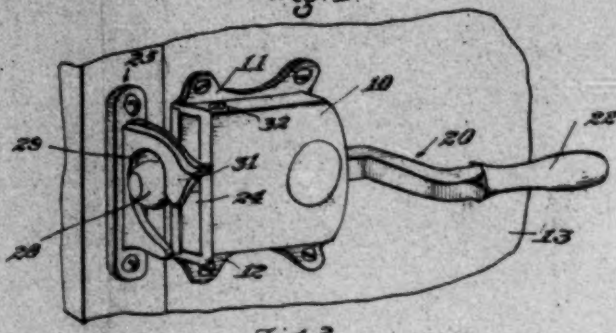


Fig. 2.

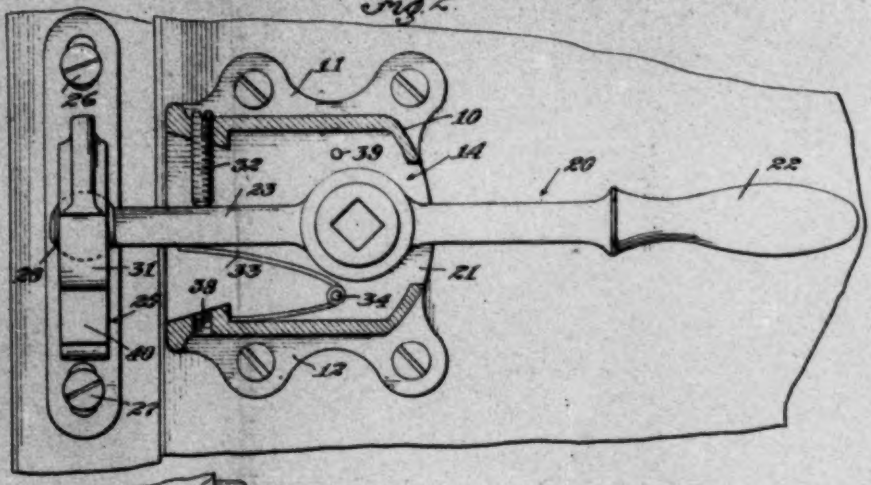


Fig. 3.

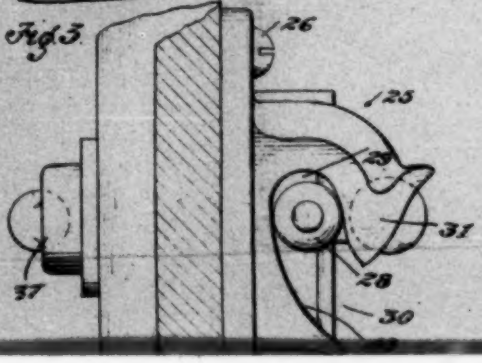
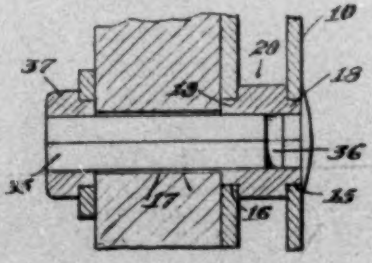


Fig. 4.



UNITED STATES PATENT OFFICE.

ABRAHAM D. WARD, OF LOS ANGELES, CALIFORNIA.

REFRIGERATOR-DOOR LOCK.

1,250,736. Specification of Letters Patent. Patented Dec. 18, 1917.

Application filed February 1, 1917. Serial No. 145,987.

To all whom it may concern:

Be it known that I, ABRAHAM D. WARD, a citizen of the United States, residing at Los Angeles, in the county of Los Angeles and State of California, have invented new and useful Improvements in Refrigerator-Door Locks, of which the following is a specification.

This invention relates to a door lock and particularly pertains to a latch for refrigerator doors and the like.

The locks used on most refrigerator doors are so constructed as to wedge the doors into a closed and sealed position. When it is desired to open the doors, however, great force must be used to break the seal and cause the door to swing outwardly to its open position. It is the principal object of this invention to provide a door latch which will act to tightly close the door and when actuated in a reverse manner will act to break the seal and open the door so that there will be no difficulty experienced in tightly closing the door or opening it thereafter.

Another object of this invention is to provide a door latch which is formed of few parts and which may be easily actuated by means of a single actuating lever to either open or close the door.

Another object of this invention is to provide a lock of the above class which possesses a bolt so constructed as to not become wedged within the keeper and not liable to wear either the keeper or the bolt member.

It is a further object of this invention to provide a lock which is decidedly strong in construction and which will act in an automatic manner to lock and close or open and unlock a door by slight movement of a single locking lever.

Other objects will appear hereinafter.

The invention is illustrated, by way of example, in the accompanying drawings in which:

Figure 1 is a view in perspective illustrating the latch in its locked position upon a larly illustrating the peculiar formation of the bolt keeper.

Fig. 4 is a view in transverse section illustrating the manner in which the operating handle is mounted within its casing.

Referring more particularly to the drawings, 10 indicates a lock casing which is here shown as substantially rectangular in shape and provided with outwardly extending flanges 11 and 12 by which it may be secured to the face of a door 13. The sectional configuration of the lock housing is channel shape forming an opened side or back which is adapted to be fitted with a back plate 14 held in place by the housing. The front plate of the housing is formed with a circular bore 15 which is in horizontal alinement with a bore 16 formed through the back plate of the lock and in communication with a passage-way 17 extending through the door. The two bores are provided to receive trunnions 18 and 19 formed upon opposite sides of the central boss of a lock handle 20. This handle extends rearwardly from the boss through an opening 21 in the end of the lock housing and is there formed with a handle grip 22 by which the lock may be operated. A lock bolt 23 is formed integral with the handle and extends in alinement therewith through an end opening 24 in the housing. This bolt is of a length sufficient to permit it to extend across the edge of the door and to engage a bolt keeper 25 secured by screws 26 and 27 to the door post. The end of the lock bolt 23 is provided with a roller ball 28 which allows the bolt to be actuated without appreciable friction.

Reference being had to Fig. 3 it will be seen that the keeper is of peculiar configuration and is an essential feature of the invention. As shown, an arcuate roller slot 29 is formed by the keeper and is of a width approximately that of the diameter of the roller ball 28. This slot has an opening 30 at its lower end, through which the ball 28 may pass. The walls of the slot leading from the opening upon inward

APPLICATION FILED FEB. 1, 1917.

1,250,736. Patented Dec. 18, 1917.

Fig. 1.

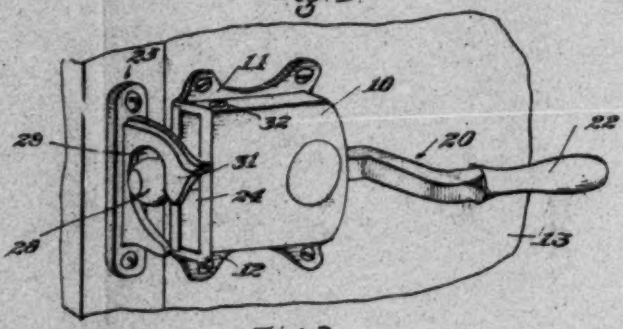


Fig. 2.

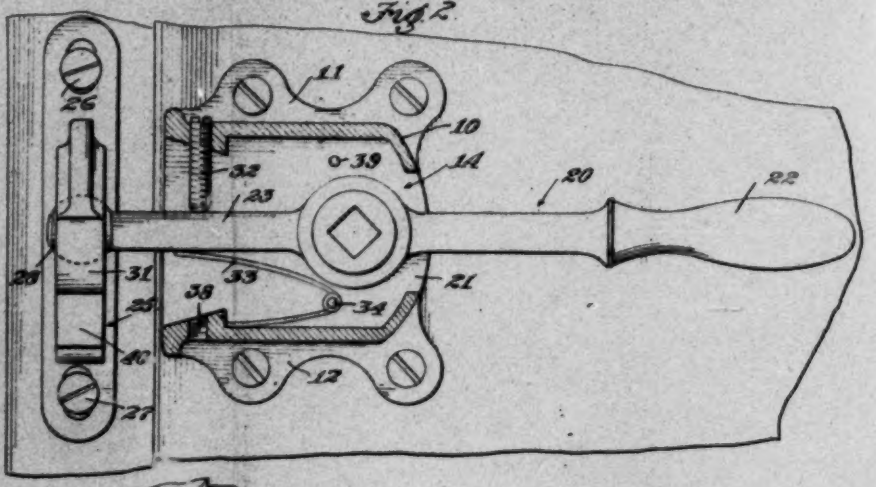


Fig. 3

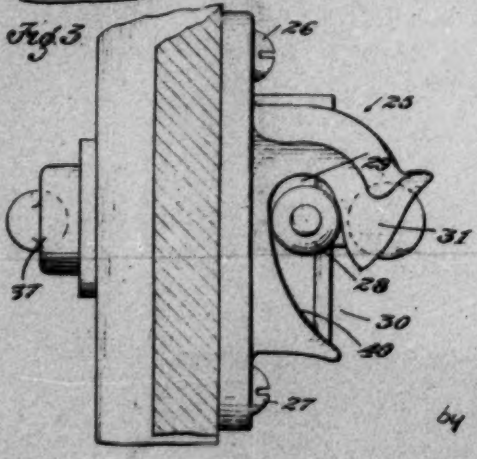
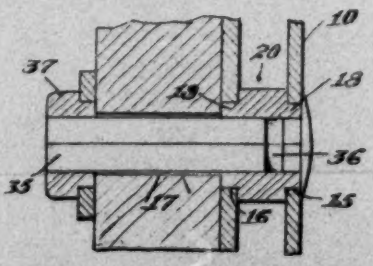


Fig. 4.



Inventor.
Abraham D. Ward.
by Hazard & Miller
Attys

ABRAHAM D. WARD, OF LOS ANGELES, CALIFORNIA.

REFRIGERATOR-DOOR LOCK.

1,250,736. Specification of Letters Patent. Patented Dec. 18, 1917.

Application filed February 1, 1917. Serial No. 145,987.

To all whom it may concern:

Be it known that I, ABRAHAM D. WARD, a citizen of the United States, residing at Los Angeles, in the county of Los Angeles and State of California, have invented new and useful Improvements in Refrigerator-Door Locks, of which the following is a specification.

This invention relates to a door lock and particularly pertains to a latch for refrigerator doors and the like.

The locks used on most refrigerator doors are so constructed as to wedge the doors into a closed and sealed position. When it is desired to open the doors, however, great force must be used to break the seal and cause the door to swing outwardly to its open position. It is the principal object of this invention to provide a door latch which will act to tightly close the door and when actuated in a reverse manner will act to break the seal and open the door so that there will be no difficulty experienced in tightly closing the door or opening it thereafter.

Another object of this invention is to provide a door latch which is formed of few parts and which may be easily actuated by means of a single actuating lever to either open or close the door.

Another object of this invention is to provide a lock of the above class which possesses a bolt so constructed as to not become wedged within the keeper and not liable to wear either the keeper or the bolt member.

It is a further object of this invention to provide a lock which is decidedly strong in construction and which will act in an automatic manner to lock and close or open and unlock a door by slight movement of a single locking lever.

Other objects will appear hereinafter.

The invention is illustrated, by way of example, in the accompanying drawings in which:

Figure 1 is a view in perspective illustrating the latch in its locked position upon a refrigerator.

Fig. 2 is a view in front elevation with parts broken away to more clearly illustrate the latch construction and its movement of operation.

Fig. 3 is a view in end elevation particularly illustrating the peculiar formation of the bolt keeper.

Fig. 4 is a view in transverse section illustrating the manner in which the operating handle is mounted within its casing.

Referring more particularly to the drawings, 10 indicates a lock casing which is here shown as substantially rectangular in shape and provided with outwardly extending flanges 11 and 12 by which it may be secured to the face of a door 13. The sectional configuration of the lock housing is channel shape forming an opened side or back which is adapted to be fitted with a back plate 14 held in place by the housing. The front plate of the housing is formed with a circular bore 15 which is in horizontal alinement with a bore 16 formed through the back plate of the lock and in communication with a passage-way 17 extending through the door. The two bores are provided to receive trunnions 18 and 19 formed upon opposite sides of the central boss of a lock handle 20. This handle extends rearwardly from the boss through an opening 21 in the end of the lock housing and is there formed with a handle grip 22 by which the lock may be operated. A lock bolt 23 is formed integral with the handle and extends in alinement therewith through an end opening 24 in the housing. This bolt is of a length sufficient to permit it to extend across the edge of the door and to engage a bolt keeper 25 secured by screws 26 and 27 to the door post. The end of the lock bolt 23 is provided with a roller ball 28 which allows the bolt to be actuated without appreciable friction.

Reference being had to Fig. 3 it will be seen that the keeper is of peculiar configuration and is an essential feature of the invention. As shown, an arcuate roller slot 29 is formed by the keeper and is of a width approximately that of the diameter of the roller ball 28. This slot has an opening 30 at its lower end, through which the ball 28 may pass. The walls of the slot leading from the opening taper inwardly and upwardly and cause the door to be drawn inwardly to a tightly closed position as it is locked. The upper portion of the keeper surrounding the throat of the arcuate slot is formed with a horn 31 which tapers inwardly and downwardly in a manner to de-

press the ball roller 28 when closing the door and to lead it into the slot without manipulation of the lock handle.

As a means for adjusting the sealing and locking action of the lock, an adjusting screw 32 is provided and is here shown as extending downwardly through the upper side wall of the lock housing to bear against the upper face of the lock bolt. The bolt 23 is held against the screw 32 by means of a leaf spring 33 which is mounted upon a pin 34 extending outwardly from the back plate of the lock. When the draw of the lock is to be increased the spring 33 is relieved from the lock bolt 23 and will cause the roller 28 to move farther into the throat of the groove 29 as the door is locked. This, as will be seen, causes the door to be drawn forcibly into its closed position and more thoroughly sealed.

In order to permit the door to be locked and unlocked from the interior of the refrigerator or room, a square pin 35 is positioned within a socket 36 in the lock handle. This pin extends through the opening 17 in the door and is fitted with an actuating handle 37 which is secured to the end of the pin and upon the opposite side of the door from the lock, thus permitting the lock to be readily actuated from the side of the door.

Attention is directed to the fact that the parts of this lock are reversible as in some locations and for some uses it would be desirable to pull downwardly upon the handle 20 when opening the door instead of upwardly as here shown. In this case the keeper 25 is inverted so that its throat opening will be above the normal locked position of the bolt. In order to cause the lock bolt to properly seat within the keeper when so inverted the adjusting screw 32 is positioned through a threaded opening 38 in the lower side wall of the lock housing and the leaf spring 33 is mounted upon a pin 39 extending from the back plate and positioned above the lock bolt, as will be evident.

When the lock is mounted upon a door the back plate and lock housing are secured by means of suitable screws to the face of the door and the keeper is fastened upon the face of the door post. The screw 32 is then adjusted to bring the bolt 23 and handle 20 in substantial horizontal alinement, after which the keeper is moved vertically, due to the clearance afforded by the screw slots in its bolting flange. When proper adjustment has been made to permit the door to properly seal the screws 26 and 27 are tightened and the lock is ready for use. Attention is directed to the fact that it is important to normally locate the keeper so that the face

In operation the door is closed. As it reaches its closed position the roller 28 will strike the forward downwardly tapering face of the horn 31 and will be led downwardly and into the slot 29, after which the lock handle may be depressed and this will force the ball 28 along the rear face of the horn 31 to seal the door. When the door is opened the roller will bear upon the face of the arcuate slot and as it is moved downwardly it will naturally be advanced to cause the door to partially open, thus breaking the seal and allowing the door to be thereafter easily handled.

It will thus be seen that the lock here provided will act in an effective manner to simultaneously lock and clamp a door in position and when its operation is reversed will simultaneously unlock and open the door with the use of a single lever and by a single movement.

While I have shown the preferred construction of my lock as now known to me, it will be understood that various changes in the combination, construction and arrangement of parts may be made by those skilled in the art without departing from the spirit of my invention.

I claim:

1. A refrigerator door lock comprising a casing having opposite screw seats and opposite spring seats, a lock handle having a boss within the casing, trunnions extending from the boss forwardly and backwardly into recesses in the casing to pivotally mount the handle, a lock bolt extending from the boss in the opposite direction from the handle centrally between the screw seats and between the spring seats and projecting from the casing, an adjusting screw adapted to be mounted through either screw seat to engage the lock bolt and limit the motion of the bolt in one direction, and a spring adapted to be mounted in either spring seat to press the bolt against the adjusting screw, the arrangement of the casing, adjusting screw and spring being such that the screw and spring may be moved from one side to the other of the bolt to operate the bolt in either direction as desired and make the lock reversible.

2. A refrigerator door lock comprising a casing adapted to be mounted against the face of a door having opposite screw seats and opposite spring seats, a handle having a central boss provided with trunnions extending both ways into recesses in the casing to pivotally mount the handle, a lock bolt extending from the central boss between the screw seats and between the spring seats roller ball mounted upon the

spring seat to press the lock bolt against the set screw, the spring and set screw being thus reversible to change the direction of the lock bolt as desired, and a bolt keeper adapted to be mounted upon the frame of the door and adapted to be engaged by the roller tip of the lock bolt, said keeper having an inclined horn leading to an arcuate roller slot so that the roller ball will pass the horn to the slot when the door is slammed shut and so that when the roller ball is in the slot, operation of the handle will force the door closed or open as desired.

In testimony whereof I have signed my name to this specification.

ABRAHAM D. WARD.

As a means for adjusting the sealing and locking action of the lock, an adjusting screw 32 is provided and is here shown as extending downwardly through the upper side wall of the lock housing to bear against the upper face of the lock bolt. The bolt 23 is held against the screw 32 by means of a leaf spring 33 which is mounted upon a pin 34 extending outwardly from the back plate of the lock. When the draw of the lock is to be increased the spring 33 is relieved from the lock bolt 23 and will cause the roller 28 to move farther into the throat of the groove 29 as the door is locked. This, as will be seen, causes the door to be drawn forcibly into its closed position and more thoroughly sealed.

In order to permit the door to be locked and unlocked from the interior of the refrigerator or room, a square pin 35 is positioned within a socket 36 in the lock handle. This pin extends through the opening 17 in the door and is fitted with an actuating handle 37 which is secured to the end of the pin and upon the opposite side of the door from the lock, thus permitting the lock to be readily actuated from the side of the door.

Attention is directed to the fact that the parts of this lock are reversible as in some locations and for some uses it would be desirable to pull downwardly upon the handle 20 when opening the door instead of upwardly as here shown. In this case the keeper 25 is inverted so that its throat opening will be above the normal locked position of the bolt. In order to cause the lock bolt to properly seat within the keeper when so inverted the adjusting screw 32 is positioned through a threaded opening 38 in the lower side wall of the lock housing and the leaf spring 33 is mounted upon a pin 39 extending from the back plate and positioned above the lock bolt, as will be evident.

When the lock is mounted upon a door the back plate and lock housing are secured by means of suitable screws to the face of the door and the keeper is fastened upon the face of the door post. The screw 32 is then adjusted to bring the bolt 23 and handle 20 in substantial horizontal alinement, after which the keeper is moved vertically, due to the clearance afforded by the screw slots in its bolting flange. When proper adjustment has been made to permit the door to properly seal the screws 26 and 27 are tightened and the lock is ready for use. Attention is directed to the fact that it is important to normally locate the keeper so that the face of the horn 31 will strike the center of the roller 28 substantially midway its length and thereby insure that the roller will be properly led into the arcuate locking slot.

face of the horn 31 and will be ... wardly and into the slot 29, after which the lock handle may be depressed and this will force the ball 28 along the rear face of the horn 31 to seal the door. When the door is opened the roller will bear upon the face of the arcuate slot and as it is moved downwardly it will naturally be advanced to cause the door to partially open, thus breaking the seal and allowing the door to be thereafter easily handled.

It will thus be seen that the lock here provided will act in an effective manner to simultaneously lock and clamp a door in position and when its operation is reversed will simultaneously unlock and open the door with the use of a single lever and by a single movement.

While I have shown the preferred construction of my lock as now known to me, it will be understood that various changes in the combination, construction and arrangement of parts may be made by those skilled in the art without departing from the spirit of my invention.

I claim:

1. A refrigerator door lock comprising a casing having opposite screw seats and opposite spring seats, a lock handle having a boss within the casing, trunnions extending from the boss forwardly and backwardly into recesses in the casing to pivotally mount the handle, a lock bolt extending from the boss in the opposite direction from the handle centrally between the screw seats and between the spring seats and projecting from the casing, an adjusting screw adapted to be mounted through either screw seat to engage the lock bolt and limit the motion of the bolt in one direction, and a spring adapted to be mounted in either spring seat to press the bolt against the adjusting screw, the arrangement of the casing, adjusting screw and spring being such that the screw and spring may be moved from one side to the other of the bolt to operate the bolt in either direction as desired and make the lock reversible.

2. A refrigerator door lock comprising a casing adapted to be mounted against the face of a door having opposite screw seats and opposite spring seats, a handle having a central boss provided with trunnions extending both ways into recesses in the casing to pivotally mount the handle, a lock bolt extending from the central boss between the screw seats and between the spring seats, a roller ball mounted upon the tip of the lock bolt, a set screw adapted to be adjustably mounted through either screw seat to limit the swinging of the lock bolt in one direction, a spring adapted to be mounted in either

spring seat to press the lock bolt against the set screw, the spring and set screw being thus reversible to change the direction of the lock bolt as desired, and a bolt keeper adapted to be mounted upon the frame of the door and adapted to be engaged by the roller tip of the lock bolt, said keeper having an inclined horn leading to an arcuate roller slot so that the roller ball will pass the horn to the slot when the door is slammed shut and so that when the roller ball is in the slot, operation of the handle will force the door closed or open as desired.

In testimony whereof I have signed my name to this specification.

ABRAHAM D. WARD.



PATENT TO
I. D. SIMMONS
FEB. 12. 1867
#62.078.

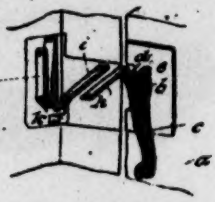


Fig. 5.

PATENT TO
A. CHARLES.
JUNE 10. 1902
#702.186.

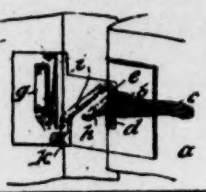


Fig. 6.



Fig. 1.

PATENT TO
P. C. WIEST.
SEPT. 14. 1909
#934.253.

Fig. 2.

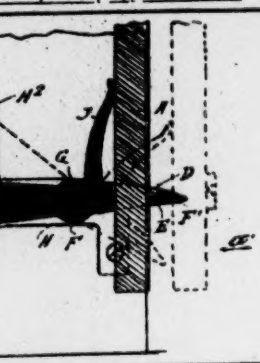
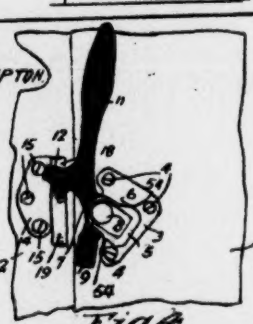


Fig. 3.

PATENT TO
E. RAATHS.
APRIL-9. 1912
#1.022.872



PATENT TO
WINTERS & CRAMPTON
JULY-19. 1921
#1,385.102

Fig. 4.

Winters & Crampton Patent #1,385,102,
Claims 5 and 6.

5. In a latch of the character described, a supporting member adapted to be attached to a door, and a latch lever pivotally mounted between its ends thereon, said lever including one arm extending from the pivot, a handle portion extending in the opposite direction from the pivot, and a second arm extending from the handle portion adjacent the pivot and in a direction substantially at right angles to the first arm, substantially as described.

6. A latch containing the elements in combination defined in claim 5, said arms on their inner sides being formed with cam surfaces, substantially as described.

DEFENDANT'S EXHIBIT No. 20.

Colored Plate Showing Lever Marked in Red.

DEFENDANT'S EXHIBIT No. 21.

Colored Plate Showing Arrangement and Parts of Latch Structure as Made by Dent Hardware Company.



IN THE

United States Circuit Court of Appeals

FOR THE THIRD CIRCUIT

No. 3727 (List No. 91)

OCTOBER TERM, 1927

ALEXANDER F. WINTERS, et al.,
Appellants,

vs.

DENT HARDWARE COMPANY,
Appellee.

And afterwards, to wit, on the ninth day of January, 1928, come the parties aforesaid by their counsel aforesaid, and this case being called for argument sur pleadings and briefs, before the Honorable Joseph Buffington, Honorable Victor B. Woolley and Honorable J. Warren Davis, Circuit Judges, and the Court not being fully advised in the premises, takes further time for the consideration thereof,

And afterwards, to wit, on the fourth day of October, 1928, come the parties aforesaid by their counsel aforesaid, and the Court, now being fully advised in the premises, renders the following decision:

IN THE

UNITED STATES CIRCUIT COURT OF APPEALS

FOR THE THIRD CIRCUIT

No. 3727

OCTOBER TERM, 1927

ALEXANDER F. WINTERS AND BASIL R. CRAMPTON,

Appellants,

vs.

DENT HARDWARE COMPANY,

Appellee.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF PENNSYLVANIA.

(Filed October 4, 1928)

Before BUFFINGTON, WOOLEY and DAVIS, *Circuit Judges.*
DAVIS, *Circuit Judge.*

This is an appeal from a decree of the District Court dismissing the bill of complaint charging the defendant with infringing United States Letters Patent No. 1,385,102 issued to Alexander F. Winters and Basil R. Crampton July 19, 1921. All seven of the claims were alleged to have been infringed. The Court held claims 1, 2, 3, 4 and 7 to be valid but not infringed and claims 5 and 6, which plaintiffs sought to withdraw, invalid.

The appellants brought suit against the Sanitary Refrigerator Company for the infringement of the patent

in question in the United States District Court for the Eastern District of Wisconsin. That court held all seven claims valid and infringed. An appeal was taken to the Circuit Court of Appeals for the Seventh Circuit. There, the patentees conceded that claims 5 and 6 were invalid and the appellee here concedes that the other claims are valid if limited to the specific structure disclosed, and when so limited, it says it does not infringe.

Claims 1 and 7 are typical. They disclose in combination a door, a casing or joint, a keeper attached to the casing and a latch lever attached to the door rather than to the casing.

The patentees proceeded upon the assumption that latch levers of this general type in the prior art were all attached to the casing and that one of the novel inclosures in their patent was the transposition of the latch from the casing to the door and the keeper from the door to the casing. They say in their specifications:

> "The swinging lever latch, or as it is better known, the Condit latch, is pivotally connected at one end of the door jamb or casing, allowing the door to be opened when the latch is thrown to an upper vertical position, and coming down across the meeting edges of the casing and door when swung to horizontal position, engaging with a cam member on the door to wedge the door tightly shut. This latch is a very serviceable latch but is relatively hard to operate due to its attachment to the casing instead of the door, and the same is liable to drop to horizontal position in which case the door cannot be closed without first raising the lever to upper vertical position while, many times, the door is inadvertently swung toward closed position and against the lever in its horizontal position with injury either to the lever or door or both. In the present invention, it is a primary object and purpose

to provide a latch which may be pivotally connected to the door and which is automatically operated to engage with a retaining member or keeper fixed on the door casing when the door is closed irrespective of the vertical or horizontal position of the latch lever, working as well in the one case as the other. . . . The mounting of the lever on the door is of value as use of one hand only is necessary for unlatching and drawing the door open. The ability to close the door and latch it automatically, irrespective of the position of the latch lever insures against injury to the latch or door and also insures that the door will be latched when it is swung shut."

The patents, however, to Keil, No. 564,448; to Dent, No. 67,506; to Schaeder, Nos. 1,117,709 and 1,170,685 and to Ward, No. 1,250,736, shows latches on the door and keepers on the casing. So there is nothing new in the transposition by the patentees of the latch from the casing to the door. Neither is there anything new or novel in the door or casing as such. Patentable novelty, therefore, must be found, if at all, in the particular form or function of the keeper or latch or in both.

The keeper in the Keil patent is strikingly similar in both form and function to that of the patent in suit. In Keil, the keeper has a base attached to the casing by three screws. From this base a post extends outwardly for a short distance and terminates in a triangular head, which on the under side extends downwardly for a distance below the lower edge of the post. The head of the latch is the apex of the triangle. The two sides terminating in the head are practically straight while those of the patent in question are somewhat curved. From the apex of the keeper when attached to the casing, one of the triangular sides extends upwardly and the other downwardly. The inner or lower side is cut upwardly and somewhat inwardly at a slight angle

to the vertical, forming a wedging cam. This meagre description reads equally well on the keeper of either the Keil patent or the patent in suit.

The function of every part of the Keil keeper is practically identical with that of the keeper of the patent in question. One or the other of the arms of the latch lever of the Keil latch slides down on the lower triangular side of the keeper when the door is being closed. Which one of these two arms contacts with this lower side depends upon the position in which the latch lever is when the door is closed. The function performed by the plaintiffs' keeper and the Keil keeper in co-operation with the latch levers is the same function performed by keepers generally in the prior art patents. Only one of the sides of the Keil keeper, however, engages the arms of the latch lever and serves as a cam to direct the lever when the door is closed, but this is due to the design of the arms of the levers and not to difference in principle of operation.

The next question concerns the latch lever. Judge Evans in construing this patent in the Circuit Court of Appeals for the Seventh Circuit said that, "patentable novelty resides in the structural differences of the latches (either in the keeper member or latch member or both)." The latch lever of the patent is about four inches long. A pin is run through the lever about one inch from the end which engages the keeper. This serves as a pivot or fulcrum. This latch lever is really a handle having two right angled arms near the pivot. One is the extension of handle beyond the pivot and the other is at right angles to it. In operation one of these two arms "is engaged with an outer portion of the keeper when the door is moved to closing position to swing the

lever from a vertical position to a horizontal and engage the other arm under the keeper, and the other (arm) of which is engaged with a different outer portion of the keeper when the door is moved to closing position and the lever is horizontal to run the lever upwardly toward vertical position or until said upper arm passes under and engages with the keeper to hold the door closed." These general features and functions of latch levers were old in the art.

The lever in the Keil patent has the general features of the plaintiffs' lever. It will lock when the door is closed whether the lever is in a horizontal, vertical or an intermediate position, because of the co-operation of the two arms 4 and 5 of the lever latch with the keeper "to force the door tightly to" when it is shut. The keeper is mounted on the door casing just as in the patent in suit. The latch lever is pivotally mounted between its ends on the door. One of the ends forms the operating handle and the other contains two arms one or the other of which engages the cam on the keeper when the door is closed.

The elements common to the devices of Keil and the plaintiffs are: a door, a casing, a keeper attached to the casing, a lever latch pivotally attached to the door, means on the keeper to engage the arms of the latch and means on the latch to engage with the keeper. The two arms of the engaging end of the Keil lever, however, are in the same parallel plane while the two arms on the plaintiffs' lever are at right angles, but both perform the same function, and this difference is one of design and not of principle of operation.

The Charles Patent, No. 702,185, issued June 10, 1902, shows a device having a latch lever corresponding in its

essential features with the plaintiffs'. It has a handle portion which may stand in a horizontal, vertical or intermediate position. There are two arms on the other end, one extending beyond the pivot or fulcrum and the other substantially at right angles to it. The function of these arms, coacting with the keeper, is to fasten the door when it is shut and to hold it in a closed position. This latch considered as a design structure is somewhat different from the plaintiffs', but functionally both are substantially the same.

The function of the arms generally is to trip, or give a kick to the latch lever by the coaction of the arms with the keeper when the door is closed. The object of all these tripping devices, which are numerous and old in the art, is to fasten the door and hold it in a closed position regardless of the position of the lever when the closing operation begins.

The art was crowded with latches that automatically lock when the door is closed when this patent to Winters and Crampton was issued. In addition to the patents to Keil and Charles, there are patents involving the same general features and functions to Dent, No. 670,506 (1900); to Schrader, No. 1,117,709 (1914), No. 1,170,685 (1915), No. 1,265,120 (1917), and to Ward, No. 1,250,736. In speaking for the Circuit Court of Appeals for the Seventh Circuit, Judge Evans said of the plaintiffs' patent:

> "Whether the other claims (than 5 and 6 admitted to be invalid) are infringed depends entirely upon the position of the patent in suit in the art. No difficulty would be experienced in finding infringement if the patent were a pioneer or was one covering such an improvement as entitled it to a broad range of equivalency. But the patent does not occu-

> py any such position. It is an extremely narrow one as a reading of the claims at once discloses. Moreover, the record shows a prior art loaded with latches possessing some of the features of appellee's latch . . . Patentable novelty, if any exists, is restricted to the particular structure disclosed . . . The precise question then is, does appellant avoid infringement by placing a lug on the near side of the head of its keeper, the surface of which is curved similarly to the outer surface of its head and which is adapted to contract with the arm projecting from the handle portion of its lever? Concede the existence of claims that are narrow and restricted to structural design only, yet even in such claims there must be some range of equivalency."

Counsel sought to withdraw claims 5 and 6, but Judge Dickinson declared them to be invalid. We have grave doubt as to the validity of the other claims, but if they are valid, their scope is clearly confined to the structural design disclosed.

The question then arises, does the defendant's device infringe the structural design which plaintiffs' patent discloses?

The defendant's device has a keeper attached to the casing of the door and a latch attached to the door, but they are quite different in design from the plaintiffs'. The defendant's keeper is old. It has an outstanding post and a head depending below the post and with upper and lower curved outer sides coming substantially to a point, but it has a lug on the near side of the triangular head. The plaintiffs' keeper does not have this.

The latch of the defendant has one arm formed with an under cam side extending from the pivot and adapted to be engaged under the depending portion of the keeper, but its other arm is entirely unlike it in form. This arm

contacts with the lug on the keeper and this causes the lever to swing and lock when the door is closed. The upper triangular side of this keeper performs no function when the door is closed. For anything that it does, it might as well not be there. It does not coact at all with the latch, but the same side in the plaintiffs' does.

Both the design and function of the defendant's latch and keeper are unlike those of the plaintiffs'. They cannot be said to infringe unless they come within the narrow range of equivalency of a design patent entering a crowded art. Structural design claims have some "range of equivalency," but that range must be as narrow as the invention itself. Is the lug outstanding from the head of defendant's keeper equivalent to the upper triangular side of the plaintiffs' keeper? It certainly is not in structure. It performs a similar function just as do the sides of many keepers of the prior art. Neither does defendant's latch have any arm corresponding in design to the upper arm of plaintiffs' latch. If the patent in suit were a pioneer patent and originated the trip or kick that locks the door when it is closed, then the defendant's device might infringe. The patent would be entitled to a broad construction and wide range of equivalency. But it came into an already crowded art with many patents having various devices involving arms, cams, lugs, projections, protuberances and all sorts of contrivances for holding the door in a closed position when it was shut.

The same range of equivalency here contended for by the plaintiffs, so as to include the defendant's structure, would bring plaintiffs' patent invalid for want of patentable novelty over the prior art or holding it valid but limited to the particular structure disclosed which does

not include the defendant's device within its range of equivalency.

The purpose of the patent laws is to reward those who make some substantial discovery or invention which adds to knowledge and takes a step in advance in the procession of the useful arts. It is not the object of those laws to grant a monopoly for every trifling device, every shadow or shade of an idea which would naturally and spontaneously occur to any mechanic skilled in the art. The patent laws never intended to lay such a heavy tax upon the industry of the country without seeing that some real contribution was made to the advancement of the useful arts. Atlantic Works vs. Brady, 107 U. S. 192,200. We think that the structure of the defendant's latch and keeper are so unlike those of the plaintiffs' that they do not come within the range of equivalency necessary to constitute infringement. With great respect we are constrained to reach a different conclusion from the Circuit Court of Appeals for the Seventh Circuit.

The decree of the District Court dismissing the bill because of non-infringement is affirmed.

Attest: A true copy.

Clerk.

IN THE

United States Circuit Court of Appeals

FOR THE THIRD CIRCUIT

No. 3727 (List No. 91)

OCTOBER TERM, 1927

ALEXANDER F. WINTERS, et al.,
Appellants,

vs.

DENT HARDWARE COMPANY,
Appellee.

Appeal from the District Court of the United States, for the Eastern District of Pennsylvania.

This cause came on to be heard on the transcript of record from the District Court of the United States, for the Eastern District of Pennsylvania, and was argued by counsel.

On consideration whereof, it is now here ordered, adjudged, and decreed by this Court that the decree of the said District Court in this cause be, and the same is hereby affirmed, with costs.

Philadelphia, October 4, 1928.

J. WARREN DAVIS,
Circuit Judge.

Endorsements:
3727
Order Affirming Decree
Received and Filed
October 4, 1928
William P. Rowland, Clerk

IN THE

UNITED STATES CIRCUIT COURT OF APPEALS

FOR THE THIRD CIRCUIT

No. 3727

OCTOBER TERM, 1927

ALEXANDER F. WINTERS AND BASIL R. CRAMPTON,

Appellants,

VS.

DENT HARDWARE COMPANY,

Appellee.

PETITION FOR REHEARING

To the Honorable, the Judges of the said court:

The petition of Alexander F. Winters and Basil R. Crampton, appellants, respectfully represents:

That they are the appellants in the cause above entitled, that the same was argued on the 9th day of January, 1928, before Circuit Judges Buffington, Woolley and Davis, and decided October 4, 1928, in an opinion by Davis, C. J., affirming the decree of the lower court, holding claims 5 and 6 to be invalid and that the remaining claims numbered 1, 2, 3, 4 and 7 of patent No. 1,385,102, issued to said appellants are not infringed by the structure manufactured and sold by the Dent Hardware Company.

Your petitioners submitting themselves at all times to the judgment of the court, respectfully suggest, as to certain findings of fact and certain conclusions of laws founded thereon in said opinion, which will be hereafter specified, there is manifest error in the opinion and decree of your honorable court in the above entitled cause and the same ought to be set aside and the cause reheard for the following reasons:

(1). That there was error in the court's understanding of what appellants' invention is and what appellants improved upon in its statement that:

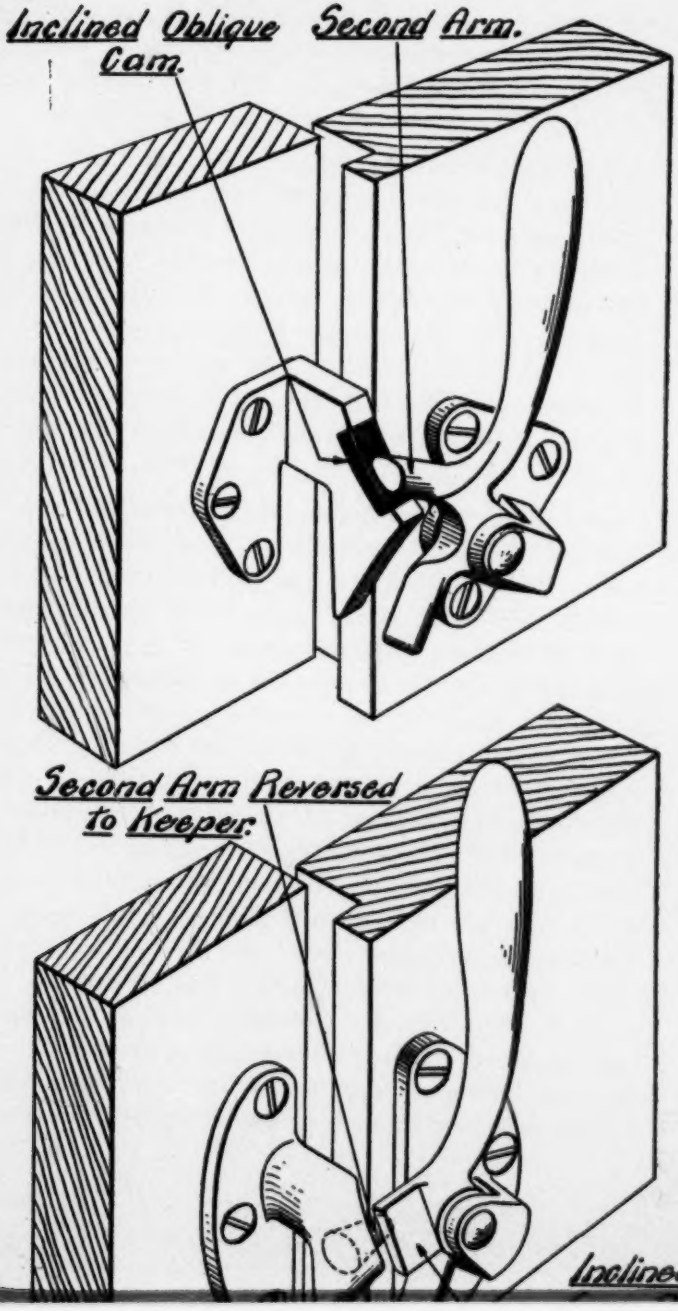
> "The patentees proceeded upon the assumption that latch levers of this general type in the prior art were attached to the casing and that one of the novel disclosures in their patent was the transposition of the latch from the casing to the door and the keeper from the door to the casing."

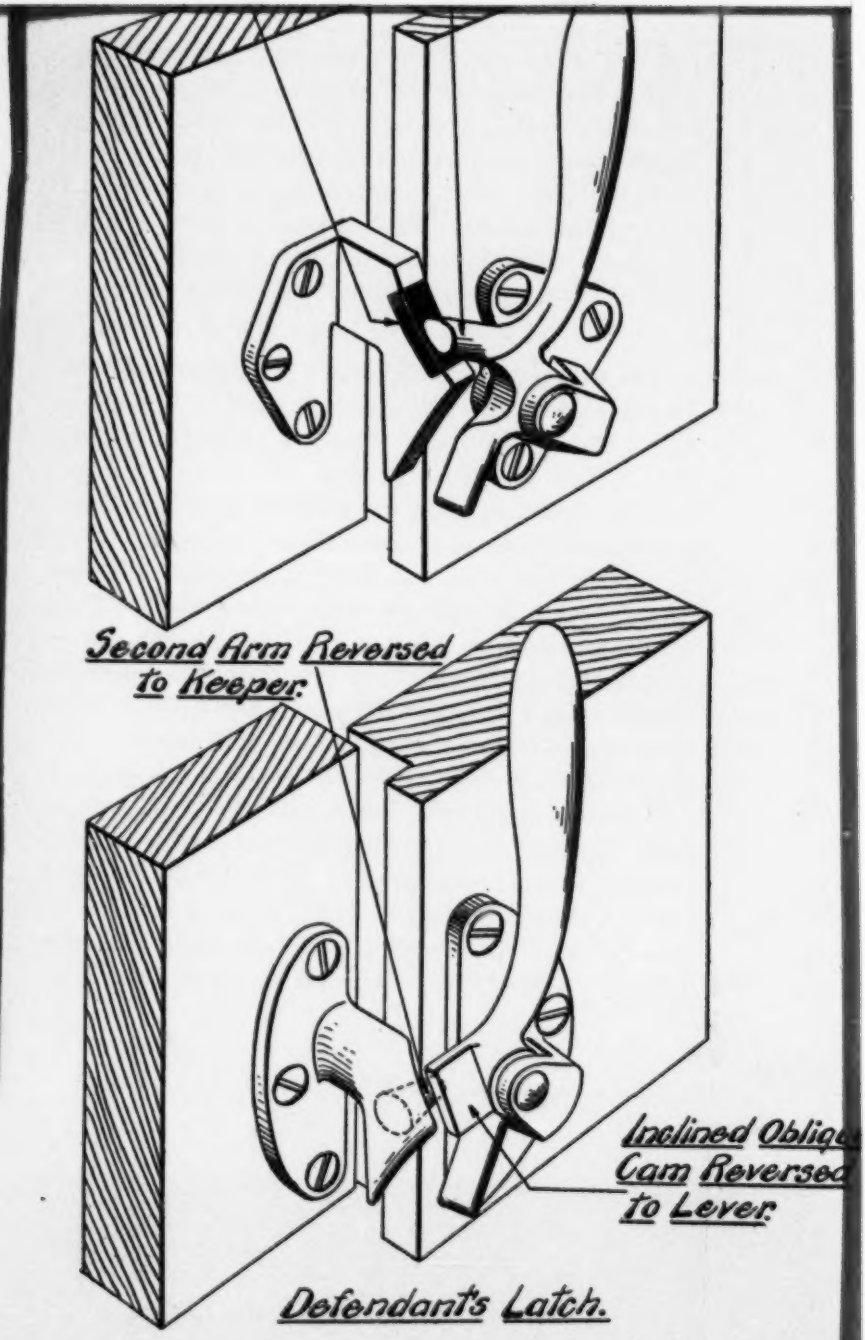
As a matter of fact the quotation from the specification of the patent, appearing in the opinion immediately following this statement, shows that the improvement was to be made in latches of the Condit type. The swinging lever latch of said Condit latch is mounted on the door jamb or casing, swings between vertical and horizontal positions in a plane parallel to the front of the door and door casing and, in horizontal position, comes down across the meeting edges of the casing and the door, this being further set forth as undesirable should the lever drop to horizontal position when the door is open with a result that the door strikes against the latch lever lying horizontally partly across the door opening and in the path of the door when it is moved toward closed position.

There was no assumption and no claim was made by the patentees that they had made the first latch in which a latch lever was mounted on a door and a keeper mounted on a door casing. Latches of the Keil and Dent drop handle type and of the spring actuated type manufactured not only by the Dent Hardware Company, shown by the various Schraeder patents, but also previously manufactured by the appellants themselves were well known as having been attached to the door while the keeper for the lever was attached to the door casing. The invention consisted in making such constructions and modifications and changes, making a new latch which would render it possible to use a swinging lever latch of the Condit type, of which the Charles patent No. 702,185, referred to in the opinion (page 5), is an example, could have its disadvantages removed, or like disadvantages overcome in the improved form of the Charles structure, as is shown in the Schraeder patent No. 1,114,296 (R. p. 128), which actually was the type of Condit latch on the market, made not only by the Dent Company but by several other manufacturers of refrigerator latches, and which it was the object and purpose of appellants to improve so as to obviate injury to the latch or door or both should the latch lever drop to horizontal position, indicated in dotted lines of Fig. 1 of the Schraeder patent (R. p. 128), when the door was open.

Necessarily, the patent was not of broad and comprehensive scope, was not a pioneer in latches, was not a pioneer in attaching a pivoted latch lever to a door, but it was contended to be the first to pivotally connect a swinging lever between its ends on the door to swing in a plane parallel to the face of the door, with limiting stops for the lever to stop it in either a vertical or hori-

Plaintiffs' Latch





Defendant's Latch.

zontal position, and with co-operating means between the lever and keeper for automatically engaging the lever with the keeper on swinging the door closed, irrespective of which position the lever might be in.

(2). That the court, accordingly, while entirely correct in its finding that the patent was not a pioneer, nevertheless gave it entirely too restricted and limited a scope and failed to observe the actual identity between the latch of the plaintiffs' patent and that manufactured by the defendant appellee, the identity being the same as that appearing in a case of the Supreme Court of the United States, the Union Paper Bag Machine Company and Samuel Cupples vs. Merrick Murphy, et al., 24 Law Ed., 935, 95 U. S. 935.

There is opposite a drawing showing in the upper figure plaintiffs' latch, in the lower figure the latch of the Dent Hardware Company. There is identity in the fixture attached to the door in each case said fixture having a base, an outwardly extending post and an overhanging arm parallel to the base. The lever in each case is pivotally mounted between the base and arm at a point between its ends so as to provide an operating handle at one side of the pivot and a keeper engaging arm at the other side and the lever swings parallel to the front side of the door. The levers in handle engaging against the upper side of the outwardly extending post when the lever is horizontal, and the arm which is in alignment with the handle engaging against the other side of the post when the lever is vertical. The keepers in both constructions have these features in common: A base to be attached to the door jamb, an outwardly extending post and a depending hook against the rear side of which and under said post the arm in

alignment with the handle in the latch lever is to engage when the door is latched in closed position. They also have in common a curved under side or edge of the substantially triangular shaped head, against which the arm in alignment with the handle of the latch lever rides when the handle is in horizontal position on closing the door to swing the handle part of the lever upwardly and bring said arm part of the lever into position to come back of the hook.

There is this further feature in common though in specifically different forms in the two latches, all of the previous things which have been defined as in common being identical in every respect. In plaintiffs' latch at the upper side or edge of the triangular shaped head is an oblique cam surface and on the lever and projecting substantially at right angles therefrom is a second arm to engage with said cam surface for swinging the lever to keeper engaging position should it occupy a vertical position when the door is closed. In the defendants' device there is a lug projecting from a side of the head and there is an inclined oblique cam on the lever. In actuality *the inclined oblique cam on the head of plaintiffs' device has been transferred to the lever* and *the second arm in plaintiffs' device has been transferred to the keeper.* This is the merest reversal of parts that can be done, and which all courts following the decision of the Union Paper Bag Machine Co., et al., vs. Merrick Murphy, et al., supra, have considered as being merely formal alterations of a plaintiff's patented construction and so identical in every respect as to come within the scope of even the most specific claims that a patentee may have. In the Supreme Court case cited the art was old, paper bag machines had been made for twenty years,

they had been constructed by many persons and in various forms and with more or less utility. Neither party in the case claimed to be the original and first inventor of an entire machine of the kind.

In the patent in said Supreme Court case, the cutter was movable, was lifted vertically, descended by its own weight and was sufficient to cause the paper to be cut by the cutter. In the charged infringing machine the knife was stationary, a weight in the form of a straight piece of metal was lifted and then thrown down sharply to make a vertical blow upon the paper to cause the knife to cut the paper as effectively as the cutter did in the complainant's machine. That is, a knife and a striker were used in both machines. In the patent the striker was stationary and the knife moved against it with the paper between, and in the infringing machine the knife was stationary and the striker was moved against it with the paper between, a mere reversal in position, but there was relative movement of the knife and the striker in both cases.

In plaintiffs' machine the second arm, so-called, is on the lever and movable to engage with a stationary cam at the upper edge of the triangular shaped head of the keeper. In the defendant's device these parts are reversed and the arm is put on and projected from the head and is stationary and the cam to co-operate therewith is transferred to the lever and is movable. The relative movement of one to the other in both cases is identical, the same effect is produced by the same means and by the same principle of operation and irrespective of how restricted the interpretation is to be given to the claims 1, 2, 3, 4 and 7 it is submitted there must be found infringement because of strict identity as defined by the

leading case of United States Supreme Court on this point, which has been followed by inferior courts, as in Anchor Cap & Closure Corp. vs. Prichard, 232 Fed. 156; Delvin, et al. vs. Paynter, et al., 64 Fed. 398-400; Brislin vs. Carnegie Steel Co., 118 Fed. 591; Union Steel Pump Co. vs. Battle Creek Steel Pump Co., 104 Fed. 342; and numerous others which might be cited almost indefinitely. While the decision in Anchor Cap & Closure Co. vs. Prichard was of a District Court it was by Judge Learned Hand, now of the Circuit Court of Appeals for the Second Circuit. The patent was No. 874,201 and apparently was a very specific one, for the court said:

> "It is quite possible that the scope of the patent must be held *strictly to the disclosure itself;* but that question is academic here for the defendant has copied the machine faithfully, except for the *mere reversal of parts.*"

It is submitted that there must be a finding of infringement even of the most specific claims of the claims 1, 2, 3, 4 and 7 of plaintiffs' patent, if said claims are valid at all, for there has been this mere reversal in position of the cam and arm noted, which under the controlling authority of the Supreme Court of the United States means that there is identity absolute in every respect.

For the foregoing reasons it is respectfully requested that the petition for rehearing be granted by the court, and if it shall seem proper, such modification or reversal of the decree entered as justice and right may require.

ALEXANDER F. WINTERS, and
BASIL R. CRAMPTON.
By FRANK E. LIVERANCE, JR.,
For Appellants.

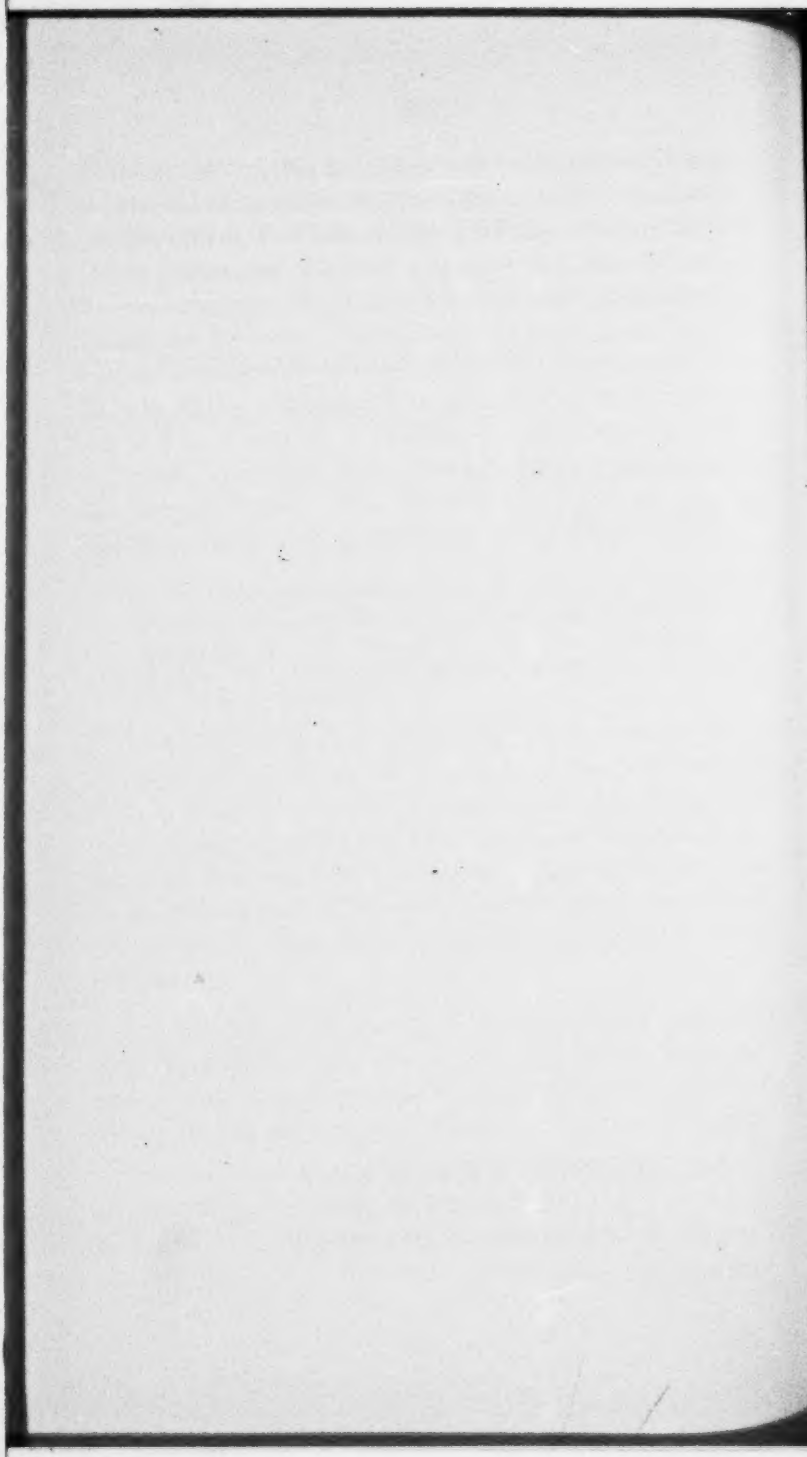
I hereby certify that the foregoing petition is made in good faith and not for any purpose of delay, and is based on good and substantial grounds and that, in my opinion, justice and right require that the cause should be reheard and the decree corrected.

FRANK E. LIVERANCE, JR.,

Counsel for Appellants.

Grand Rapids, Michigan.

October 10, 1928.



IN THE

United States Circuit Court of Appeals

FOR THE THIRD CIRCUIT

No. 3727

OCTOBER TERM, 1928

ALEXANDER F. WINTERS and BASIL R. CRAMPTON,

Appellants,

vs.

DENT HARDWARE COMPANY,

Appellee.

MEMORANDUM FOR DENT HARDWARE COMPANY, APPELLEE, CONTRA PETITION FOR REHEARING.

Appellants' petition seems to be merely an application to reargue and rehash the same matter which this Court held under advisement for between eight and nine months and decided, having before it the opinion of the Chicago Circuit Court of Appeals and appellants' elaborate brief based on substantially the same line of argument set up in the petition. Nothing new has been adduced and for this reason alone, the petition should be denied.

A further reason for denial is the fact that every item here in controversy or involved in this petition (which is the validity or scope of the claims of the Winters and Crampton patent and their infringement) will be passed on by the Supreme Court probably by the forepart of December about six weeks hence.

Counsel for appellee here, filed a petition for a certiorari to the Chicago Court of Appeals last spring basing said petition on the conflict of the decision of said Chicago Court of Appeals with Judge Dickinson's decision herein, the opinion of this Court not being filed until October 4, 1928. Counsel for appellee immediately moved the Supreme Court for leave to file the opinion of this Court, the motion being noticed for October 8th, 1928. On that day the Supreme Court denied the petition for certiorari. The writer immediately on October 11th, 1928, filed a petition for rehearing attaching thereto the opinion of the Chicago Court of Appeals and the opinion of this Court filed October 4th, 1928.

On October 15th the Supreme Court granted said petition for rehearing and ordered certiorari to issue to the Chicago Court of Appeals. The certified order reads as follows:

SUPREME COURT OF THE UNITED STATES

No. 128. October Term, 1928.

Sanitary Refrigerator Company,
Petitioner,

vs.

Alexander F. Winters and Basil C. Crampton.

Memorandum for Dent Hardware Company, Appellee, Contra Petition for Rehearing

ON CONSIDERATION of the petition for rehearing filed herein,

IT IS NOW HERE ORDERED BY THIS COURT that the said petition be, and the same is hereby, granted. The order entered October 8, 1928, denying the petition for a writ of certiorari herein is revoked, and a writ of certiorari in this cause is granted.

A TRUE COPY:

Attest:

CHARLES ELMORE CROPLEY,
Clerk of the Supreme Court
of the United States.

We are informed by the clerk of the Supreme Court in a letter dated October 18th that the above case No. 128 will be reached for argument the last of November or the forepart of December, 1928.

In view of the foregoing, it is respectfully submitted that this petition for rehearing should be denied.

E. HAYWARD FAIRBANKS,
Counsel for Appellee.

IN THE

United States Circuit Court of Appeals

FOR THE THIRD CIRCUIT

No. 3727 (List No. 91)

ALEXANDER F. WINTERS, et al.,
Appellants,

vs.

DENT HARDWARE COMPANY,
Appellee.

SUR PETITION FOR REHEARING

AND NOW, to wit: October 31, 1928, after due consideration, the petition for rehearing in the above entitled case is hereby denied.

Philadelphia,

J. WARREN DAVIS,
Circuit Judge.

Endorsements:
3727
Order Denying Petition for
Rehearing
Received and Filed
October 31, 1928
Saunders Lewis, Jr., Clerk

UNITED STATES OF AMERICA.

Eastern District of Pennsylvania.

THIRD JUDICIAL CIRCUIT.

Set.

I, William P. Rowland, Clerk of the United States Circuit Court of Appeals, for the Third Circuit, DO HEREBY CERTIFY the foregoing to be a true and faithful copy of the original transcript of record and proceedings in this Court in the case of:
ALEXANDER F. WINTERS and

BASIL R. CRAMPTON,
Appellants,

vs.

DENT HARDWARE COMPANY,
Appellee.

No. 3727

on file, and now remaining among the records of said Court, in my office.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed the seal of the said Court, at Philadelphia, this 5th day of November, in the year of our Lord one thousand nine hundred and twenty-eight, and of the Independence of the United States, the one hundred and fifty-third.

SEAL

WILLIAM P. ROWLAND,
Clerk of the U. S. Circuit Court
of Appeals, Third Circuit.

SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed December 3, 1928

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Third Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

FILE COPY

MAY 8 19
CHARLES ELMORE C

IN THE

Supreme Court of the United States

No. [redacted] 4 Term, 19 .

SANITARY REFRIGERATOR CO.,
Petitioner,

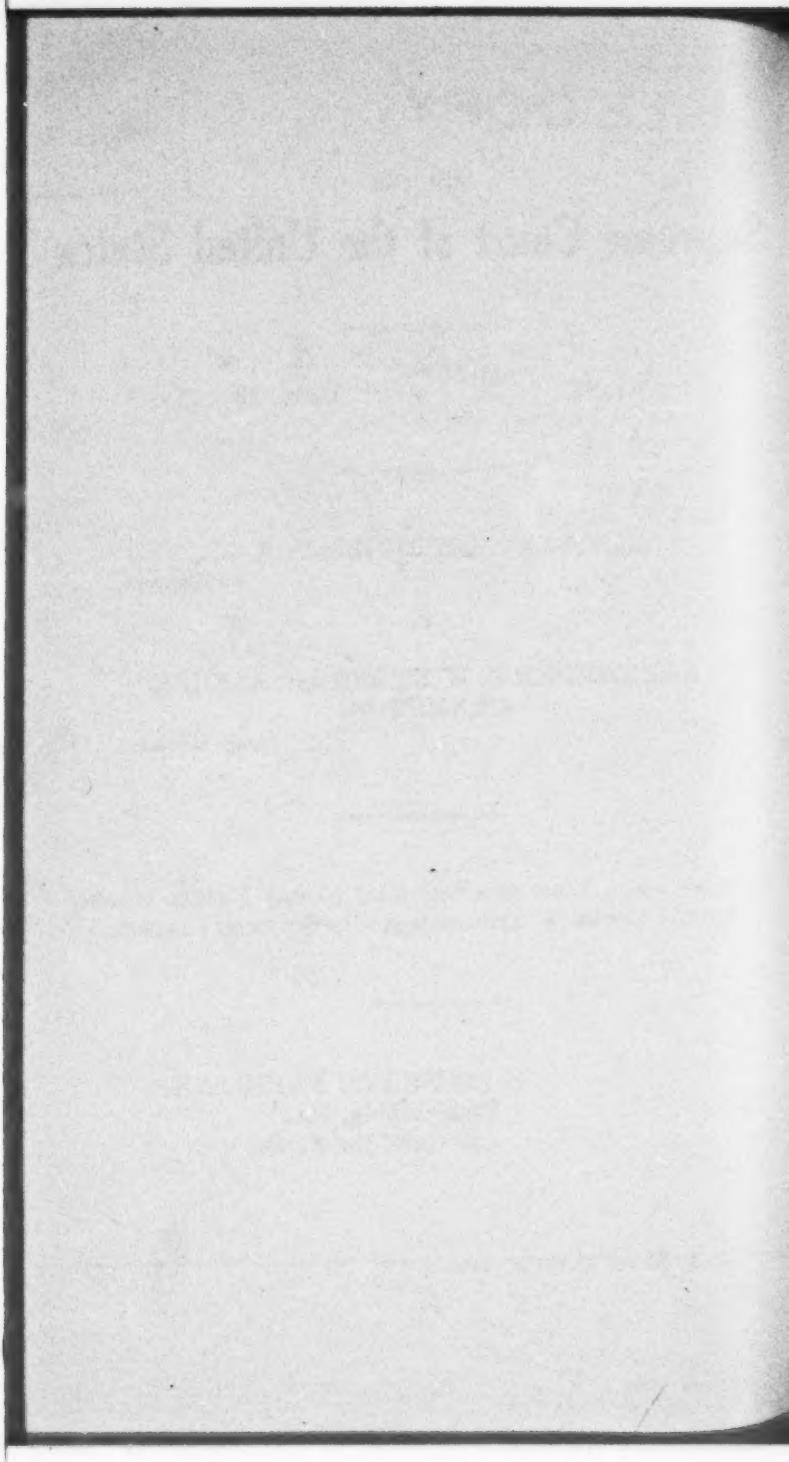
v.

ALEXANDER F. WINTERS and BASIL R. CRAMPTON,
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

E. HAYWARD FAIRBANKS,
Philadelphia, Pa.,
Counsel for Petitioner.

I. F. Huntsinger Co., Appellate Printers, Camden, N. J.



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IN THE

SUPREME COURT OF THE UNITED STATES.

PETITION FOR A WRIT OF CERTIORARI.

SANITARY REFRIGERATOR CO., *Petitioner,* v. ALEXANDER F. WINTERS and BASIL R. CRAMPTON, *Respondents.*	No.	Term, 19 .

Now comes Sanitary Refrigerator Co., the above-named petitioner, by E. Hayward Fairbanks, its attorney and counsel, and petitions this Honorable Court for a writ of certiorari directed to the Honorable, the Judges of the United States Circuit Court of Appeals, within and for the Seventh Judicial Circuit, commanding them forthwith to certify and return to this Court all proceedings had by them in the suit lately before them, wherein petitioner was appellant and said Alexander F. Winters and Basil R. Crampton were appellees.

The matter herein relates to Letters Patent of the United States No. 1,385,102, patented July 19, 1921, for an improvement in latch, said patent being granted to respondents herein.

Upon appeal the United States Circuit Court of Appeals for the Seventh Circuit held that said Winters and Crampton patent in suit was invalid as to claims 5 and 6, but valid and infringed as to claims 1, 2, 3, 4 and 7. Said

opinion of the Circuit Court of Appeals for the Seventh Circuit is at variance and in conflict with the opinion of Honorable Oliver B. Dickinson, District Judge for the Eastern District of Pennsylvania, who, in *Winters, et al. v. Dent Hardware Co.*, 20 Fed. 2d 671, involving the same Winters and Crampton patent and upon the same state of facts and the same issue of infringement held, that claims 1, 2, 3, 4 and 7 of said Winters and Crampton patent were not infringed and ordered a dismissal of the bill.

Respectfully,

E. HAYWARD FAIRBANKS,
Counsel for Petitioner.

HISTORY OF PROCEEDINGS IN THE SEVENTH CIRCUIT.

On or about November 23, 1925, respondents here, Winters and Crampton, filed their bill of complaint (R. p. 1) as plaintiffs, against Sanitary Refrigerator Co. in the District Court of the United States for the Eastern District of Wisconsin, charging your petitioner with infringement of Letters Patent No. 1,385,102, patented July 19, 1921 (R. p. 72), for an improvement in latches by reason of its use and sale of a latch constructed under patent No. 1,575,647 (R. p. 156), and praying an injunction and an accounting of profits in accordance with the usual practice in such cases.

On or about the 29th day of December, 1925, your petitioner, Sanitary Refrigerator Co., filed its answer therein. (R. p. 5.)

The issues being joined as above, the case was brought on to final hearing before his Honor, F. A. Geiger, District Judge, on February 18, 1927. On February 21, 1927, Judge Geiger announced a decision adverse to the Sanitary Re-

frigerator Co. (defendant there and petitioner here), holding all the claims of said Winters and Crampton patent valid and infringed by a latch constructed in accordance with patent No. 1,575,647 (R. p. 156), and referring the matter to a Master for an accounting under an interlocutory decree of the usual form, filed February 24th, 1927. (R. p. 61.)

After the decision by Judge Geiger, adverse to your petitioner, holding all the claims of the Winters and Crampton patent valid and infringed, Sanitary Refrigerator Co. (defendant there, petitioner here) appealed the case to the United States Circuit Court of Appeals for the Seventh Circuit on or about March 25, 1927 (R. p. 62), assigning errors, filing a supersedeas bond and perfecting said appeal.

After the case was docketed in the United States Circuit Court of Appeals for the Seventh Circuit, it came on for hearing before Justices Alschuler, Evans and Page, and was argued before them on January 18, 1928, and was decided February 9, 1928, in an opinion per Evans, J., reversing Judge Geiger as to claims 5 and 6 and holding said claims invalid, and affirming Judge Geiger as to the validity and infringement of claims 1, 2, 3, 4 and 7.

Copies of the decision of the District Court and of the Circuit Court of Appeals for the Seventh Circuit are hereto appended.

On the twenty-eighth day of February, 1928, your petitioner filed a petition for re-hearing in the United States Circuit Court of Appeals for the Seventh Circuit, which was denied March 6, 1928.

Your petitioner then moved in the Circuit Court of Appeals for the Seventh Circuit for an order staying the mandate pending the determination of this petition, which order was entered in said Court on or about March 8, 1928.

HISTORY OF PROCEEDINGS UNDER THE SAME WINTERS AND CRAMPTON PATENT No. 1,385,102 IN SUIT IN THE THIRD CIRCUIT IN THE EASTERN DISTRICT OF PENNSYLVANIA.

On the fifteenth day of March, 1927, Alexander F. Winters and Basil R. Crampton, respondents here, filed their bill of complaint in the District Court of the United States for the Eastern District of Pennsylvania against the Dent Hardware Company, a Pennsylvania corporation.

On this same day, moving papers for a preliminary injunction were filed, and defendant thereafter filed its affidavits *contra* motion.

Upon the cause coming on to be heard upon said motion, for final hearing. Thereupon, on April 27, 1927, defendant Judge Dickinson declined to hear the same and set the case filed its answer, placing the cause at issue. The case then went to final hearing upon full pleadings and proofs and was argued by counsel for the respective parties before Judge Dickinson, who, on August 11, 1927, filed an opinion holding claims 5 and 6 of the patent in suit (R. p. 72) invalid and the remaining claims 1, 2, 3, 4 and 7 not infringed. (*Winters v. Dent*, 20 Fed. 2d 671.)

On August 12, 1927, Judge Dickinson entered a decree dismissing the bill of complaint.

On October 10, 1927, plaintiffs filed an appeal from Judge Dickinson's decree dismissing the bill, to the Circuit Court of Appeals for the Third Circuit, which appeal has been argued and is now pending undetermined in the Circuit Court of Appeals for the Third Circuit.

DIFFERENCES OF OPINION.

As a part of this petition, your petitioner, Sanitary Refrigerator Co., submits herewith a certified copy of the record in the cause determined in the Seventh Circuit, showing all proceedings therein, both in the District Court in Wisconsin and the Circuit Court of Appeals for the Seventh Circuit. As shown by this record, the contentions at the hearings in said Courts, so far as concerns present questions, were in the Circuit Court of Appeals for the Seventh Circuit and in the District Court for the Eastern District of Pennsylvania, in reference to the validity and infringement of Winters and Crampton's claims 1, 2, 3, 4 and 7. (R. p. 72.) As to these questions, Circuit Judges Alschuler, Evans and Page, comprising the Circuit Court of Appeals for the Seventh Circuit, took one view, holding that the Winters and Crampton patent, although of narrow scope, was infringed as to claims 1, 2, 3, 4 and 7, while Judge Dickinson, in the District Court for the Eastern District of Pennsylvania, held that claims 1, 2, 3, 4 and 7 of the Winters and Crampton patent were not infringed, 20 Fed. 2d 671, the issue of infringement being the same in both cases and being constructed under petitioner's Schrader patent. (R. p. 156.)

Your petitioner, therefore, shows that under the opinion of the Circuit Court of Appeals for the Seventh Circuit, your petitioner's device, constructed under said Schrader patent No. 1,575,647 (R. p. 156), has been held to be an infringement of the Winters and Crampton patent No. 1,385,102 in suit (R. p. 72) and, consequently, cannot be safely made, used or vended in the States of Illinois, Indiana and Wisconsin.

In the Eastern District of Pennsylvania and elsewhere, by reason of Judge Dickinson's decree of dismissal (20 Fed. 2d 671), petitioner's latch, constructed under the Schrader patent No. 1,575,647 (R. p. 156), can be made, used and sold without molestation, not only in the Eastern District of Pennsylvania, but in every other portion of the United States excepting the Seventh Circuit.

Your petitioner, therefore, shows that said decisions or adjudications in the Circuit Court of Appeals for the Seventh Circuit and in the United States District Court for the Eastern District of Pennsylvania in the Third Circuit are at variance and in conflict with each other, and the errors of the one or the other can only be authoritatively corrected in this Honorable Court. Also, that other matters of law decided as aforesaid by said Circuit Court of Appeals for the Seventh Circuit are at variance with sundry decisions of this Honorable Court as well as of other Circuit Courts of Appeal and at variance with the course and principles of equity.

Your petitioner further avers that the erroneous decision of the Circuit Court of Appeals for the Seventh Circuit seriously affects very large interests of your petitioner and inflicts serious and far-reaching damage upon it, inasmuch as it allows interference wrongfully with their business, which has been and should be protected from such wrongful interference by reason of the issuance of petitioner's said Schrader patent No. 1,575,647. (R. p. 156.)

Your petitioner further avers that the case is one of peculiar gravity and importance, inasmuch as your petitioner's manufacturer, the Dent Hardware Company of Fullerton, Penna., manufacturer of the device held to infringe in the Seventh Circuit and not to infringe in the Third Circuit, carries on one of the largest businesses of manufacturing refrigerator hardware in the world, and that the interposition of this Court is necessary to secure uniformity of decision, since special hardship is inflicted and is liable to be inflicted upon your petitioner unless the errors in law and fact of the Circuit Court of Appeals for the Seventh Circuit hereinbefore recited are corrected by your Honorable Court.

SPECIFIC ASSIGNMENTS OF ERRORS.

Your petitioner respectfully shows and insists that the decision in the Circuit Court of Appeals for the Seventh Circuit is erroneous in the following particulars:

1. The opinion is erroneous in holding that claims 1, 2, 3, 4 and 7 of the Winters and Crampton patent (R. p. 72) are infringed by the device constructed under the Schrader patent No. 1,575,647. (R. p. 156.)

2. The opinion is erroneous in finding infringement after holding the Winters and Crampton patent to be a narrow, restricted and limited patent and finding that such narrow, restricted and limited claims are infringed by defendants' device constructed under said Schrader patent No. 1,575,647. (R. p. 156.)

Wherefore, your petitioner prays that this Honorable Court take cognizance of the matters herein set forth or referred to and grant unto your petitioner a writ of certiorari, requiring said cause and the record thereof to be certified to this Court by the United States Circuit Court of Appeals for the Seventh Circuit, for review and determination herein, pursuant to the provision of the statute in such cases made and provided; and that your petitioner may have such other and further relief in the premises as the nature and circumstances of their case may require.

And your petitioner will ever pray, etc.

SANITARY REFRIGERATOR CO.
By:
WM. MAUTHE, Pres.

STATE OF WISCONSIN, }
COUNTY OF FONDULAC, } *ss.*

WILLIAM MAUTHE, President of the above-named petitioner, being duly sworn upon oath, says that he has read the foregoing petition subscribed to by him, and knows the contents thereof, and that the same is true in substance and matter of fact, as he verily believes.

(Sgd.) WILLIAM MAUTHE, Pres.

Subscribed and sworn to before me this 4th day of May, 1928.

BOYNTON K. MILLER,
Notary Public.

I hereby certify that the foregoing stated grounds in support of the petition for writ of certiorari in the above-entitled cause are, in my opinion, well founded in point of law.

E. HAYWARD FAIRBANKS,
Counsel for Petitioner.

FILE COPY

FILED
MAY 8 19
CHARLES ELMORE

IN THE

Supreme Court of the United States

No. 977/28 OCTOBER Term 1927

SANITARY REFRIGERATOR CO.,
Petitioner,

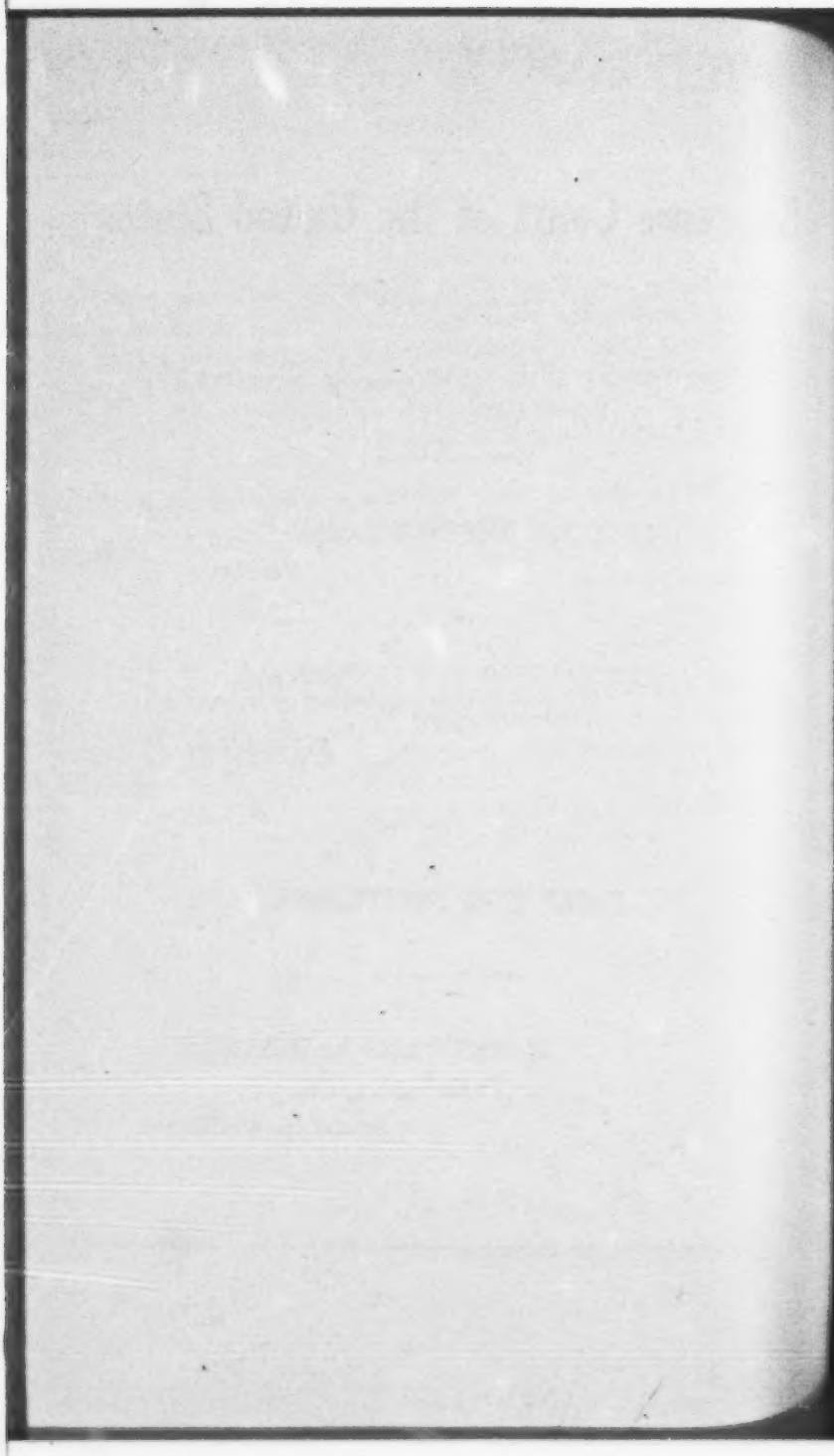
v.

ALEXANDER F. WINTERS and
BASIL R. CRAMPTON,
Respondents.

BRIEF FOR PETITIONER

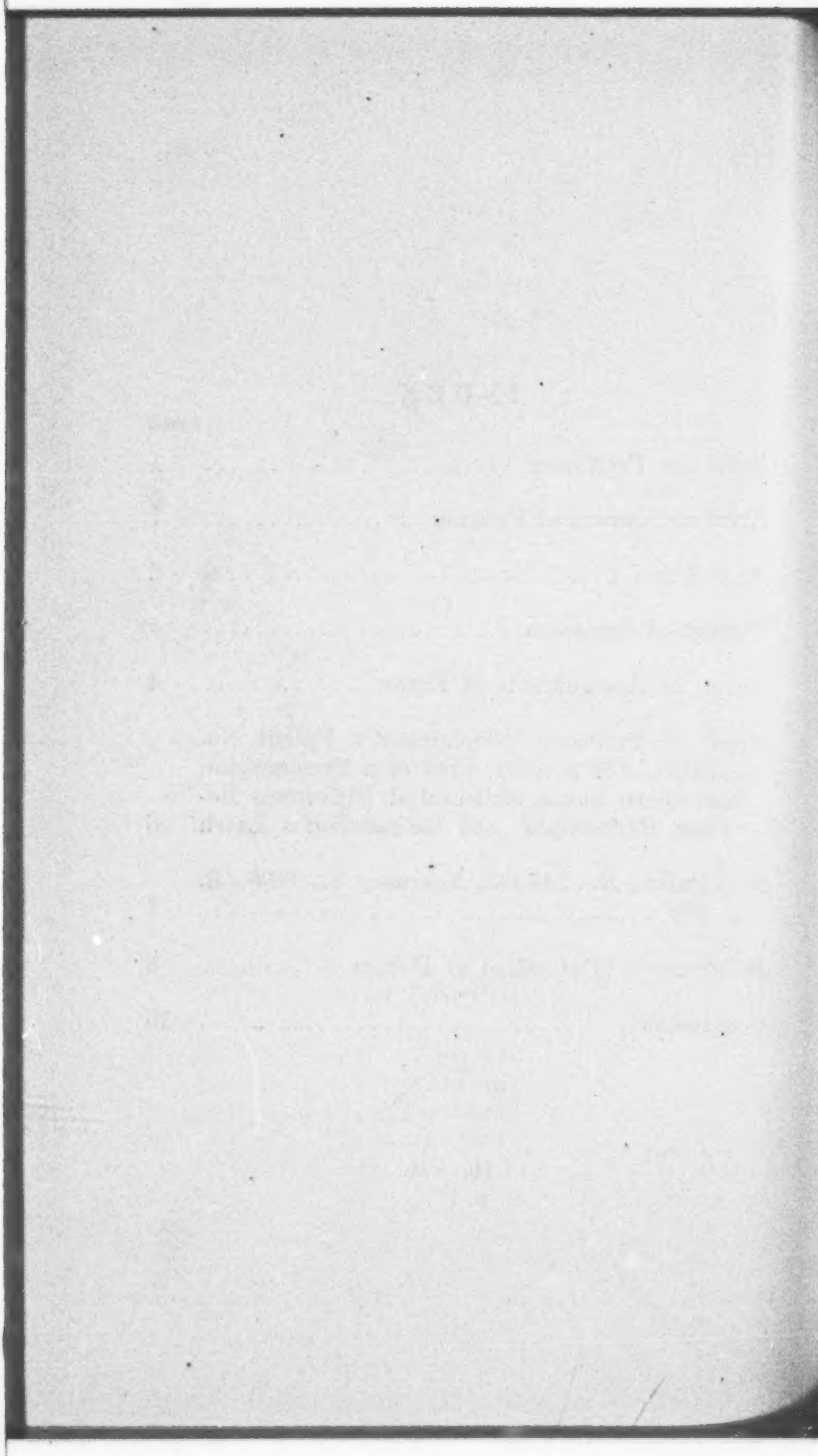
E. HAYWARD FAIRBANKS,
Philadelphia, Pa.,
Counsel for Petitioner.

I. F. Huntsinger Co., Appellate Printers, Camden, N. J.



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IN THE SUPREME COURT OF THE
UNITED STATES.

No. Term 19 .

SANITARY REFRIGERATOR CO.,
Petitioner,

v.

ALEXANDER F. WINTERS and BASIL R. CRAMPTON,
Respondents.

BRIEF FOR PETITIONER.

In the matter of the petition of Sanitary Refrigerator Co. for a writ of certiorari to bring up the case of Sanitary Refrigerator Co., petitioner, v. Winters and Crampton, respondents, for review and determination.

BRIEF IN SUPPORT OF PETITION.

This petition presents a conflict between the decisions of the Circuit Court of Appeals for the 7th Circuit, and the District Court for the Eastern District of Pennsylvania in the Third Circuit (20 Fed. 2nd 671) as to the scope of claims 1, 2, 3, 4 and 7 of the Winters and Crampton patent in suit No. 1,384,102. (R. p. 72.)

MAIN FACTS.

This is a patent case and concerns a latch for refrigerator doors or the like wherein the latch lever automatically locks when the door is slammed. The general construction of these latches is of great antiquity, as they all comprise a keeper having a notch into which the latch lever snaps or locks when the door is closed, the other element of the combination being the latch lever which in the present instance is pivotally mounted on the door. In some cases the latch lever was pivoted to the door jamb or casing and the keeper mounted on the door. It was of equal antiquity to mount the keeper on the door jamb or casing and the latch lever on the door. It was of equal antiquity to mount the latch lever on the door so that when the door was slammed shut the latch lever would automatically close or lock no matter whether it stood vertical or horizontal. In practically all of the prior art patents, the latch lever is kicked or tripped by the keeper just as the door begins to close tightly. The record herein shows from plaintiffs' file wrapper that plaintiffs' (respondents') keeper considered, *per se*, was old, since claim 7 to the keeper (R. p. 50) was rejected on prior patents (R. p. 52) and cancelled. Plaintiffs' claims 5 and 6 drawn to the latch lever, *per se* (R. p. 77), have unanimously been held invalid by the Circuit Court of Appeals for the Seventh Circuit and by Judge Dickinson in his opinion, 20 Fed. 2d 671. In fact, plaintiffs, Winters and Crampton, at the argument in the Court of Appeals practically admitted that claims 5 and 6 of the patent in suit were invalid. The only contribution, if any, that plaintiffs made to the art was to assemble the old keeper and the old latch lever in such a way, that the top arm or pin 12 of plaintiffs' latch lever (R. p. 74) was positioned so that when the lever stood vertical, said pin 12 would ride over the curved surface 18 of the keeper and be tripped. This is the distinguishing feature in plaintiffs' claims 1, 2, 3, 4 and 7 and is in every claim either directly or by implication and it is only by reading this feature of construction or mode of operation

into plaintiffs' claims 1, 2, 3, 4 and 7 that said claims can be saved in view of the Keil Patent No. 554,448. (R. p. 88.)

CONFLICT OF DECISIONS.

As explained in the petition, page five, the Circuit Court of Appeals for the Seventh Circuit has held that Winters and Crampton's claims 1, 2, 3, 4 and 7 (R. pp. 76 and 77) are infringed, while Judge Dickinson, in the District Court for the Eastern District of Pennsylvania in the Third Circuit, has held on the same issue of infringement that these claims are **not infringed** (20 Fed. 2d 671).

We, therefore, humbly submit that if Judges Alschuler, Evans and Page, comprising the Circuit Court of Appeals for the Seventh Circuit, were wrong in their conclusions, as expressed in their opinion at the end of the record, as we believe they were, then the only relief petitioner can have must come from this Court.

If Judge Dickinson was right in his finding of non-infringement, at the bottom of page 672 of 20 Fed. 2d,

> "that the differences in the two devices are only such as to make a difference in special construction. That there is such difference is evidenced by the findings of the Patent Office **in granting a patent to each.** We are here concerned only with plaintiffs' claim of right to a monopoly, and we hold that they have none, except to a latch of their own special construction, and this right our finding is the defendant does not infringe."

then this Court only has the power to effectuate his opinion. But which of these antagonistic decisions the Courts in other Districts will follow no man can tell (*Pelzer v. Newhall*, 93 Fed. 685), and it is because of this uncertainty as to what the legal scope of respondent's claims really is and which of these antagonistic conclusions other Courts may adopt, that this petitioner has now come to this Court.

These various Federal decisions have made the Winters and Crampton patent (R. p. 72), which in point of good law,

is of the same scope throughout the United States and its territories, one kind of a monopoly, in the States comprising the Seventh Circuit and a dissimilar kind of a monopoly in the Eastern District of Pennsylvania and throughout the rest of the United States (except the Seventh Circuit), and it is submitted that this Honorable Court should correct so glaring a diversity of interpretation not only in the interest of your petitioner but also in the interest of the public at large.

AS TO THE ASSIGNMENTS OF ERROR.

The Circuit Court of Appeals for the Seventh Circuit in its decision in *Sanitary Refrigerator Co. v. Winters & Crampton*, speaking with the utmost respect, seems to have misunderstood or misinterpreted the law relating to interpreting the claims of primary and secondary patents, to which latter class the Winters & Crampton patent in suit admittedly belongs, since after correctly stating in various places that said Winters & Crampton patent was a narrow, limited patent restricted to the particular structure disclosed, it wound up by construing the Winters & Crampton claims 1, 2, 3, 4 and 7 as though that patent were a broad, primary, pioneer patent by giving said claims such an undue breadth and scope as to dominate defendant's patented structure (R. p. 156) of which Winters and Crampton manifestly never had the slightest conception.

It is, therefore, believed that the Circuit Court of Appeals for the Seventh Circuit erred in its final holding, in effect, that the Winters and Crampton patent in suit is a pioneer (after accurately stating in various places that it was not), and that its claims (excepting 5 and 6) are entitled to a broad construction dominating defendant's device which is neither disclosed or claimed in the patent in suit, after correctly stating as to said patent, as follows:

> "Claims 1, 2, 3, 4 and 7 'are narrow, specific claims.'
>
> "It is an extremely narrow one as a reading of the claims at once discloses. Moreover, the record shows a

prior art loaded with latches possessing some of the features of appellee's latch.

"It follows, therefore, that patentable novelty, if any exists, is restricted to the particular structure disclosed."

"That the claims are narrow and their validity is conceded.

"But it is this narrow field and nothing more which the inventor possessed when he secured his patent."

Judge Evans, in writing for his Court, seems to have to have cast to the winds the familiar rules of law anent the interpretation of primary and secondary patents, which have been developed in numerous cases in the Federal Courts of all grades beginning before the Civil War and continuing down to the present time. The history of the subject can be traced from an early period until now in the following familiar leading cases, with which this Court is so familiar that we shall not quote from them as we have collected them here, not for the purpose of instruction, but so that the Court can conveniently refer to them, if it so desires:

McCormick, v. Talcott, 20 Howard 405, 1857; *Burr v. Duryee,* 1 Wall 531; *Railway Co. v. Sayles,* 97 U. S. 556, 1878; *Morley Machine Co. v. Lancaster,* 129 U. S. 273, 1889; *Pope Mfg. Co. v. Gormully Mfg. Co.,* 144 U. S. 242, 1892; *Sessions v. Romadka,* 145 U. S. 45, 1892; *Knapp v. Morss,* 150 U. S. 230, 1893; *Miller v. Eagle Co.,* 141 U. S. 204, 1894; *Duff v. Pump Co.,* 107 U. S. 639, 1882; *Boyd v. Jamesville Hay Tool Co.,* 158 U. S. 267, 1895; *Dashiell v. Grosvenor,* 162 U. S. 432, 1896; *Westinghouse v. Boyden,* 170 U. S. 537; *Kokomo Fence Machine Co. v. Kitselman,* 189 U. S. 8, 1903; *Cimiotti Unhairing Co. v. American Fur Refining Co.,* 198 U. S. 399, 1905.

GRANT OF PETITIONER'S-DEFENDANT'S PATENT NO. 1,575,647 (R. p. 156), CREATES A PRESUMPTION THAT THERE WAS A SUBSTANTIAL DIFFERENCE BETWEEN PETITIONERS' AND RESPONDENT'S LATCH.

At this point we desire to call attention to a rule of law, as enunciated by this Court, to the effect that where a defendant justifies under a patent, as defendant (petitioner) does here, the issuance of such patent to it, raises a presumption in its favor, a presumption that there are clear structural differences and that it has *prima facie*, a right to manufacture or use its own patented device, as well as the plaintiffs have a right to manufacture theirs. This is particularly so where the patent under which petitioner (defendant) operates is obviously not an improvement upon (plaintiffs') respondents' patented machine, does not obviously take plaintiffs' machine as a foundation and starting point, but, as here, is an improvement upon the expired Dent, Keil and Charles patents. This rule is so well established that we deem it unnecessary to do more than cite some of the cases wherein it was applied, such as: *Corning v. Burden*, 15 How. 271; *Miller v. Eagle Mfg. Co.*, 151 U. S. 208; *Boyd v. Janesville Hay Tool Co.*, 158 U. S. 261; *Kokomo v. Kitselman*, 189 U. S. 8.

In view of the above decisions, we are entitled to insist that weight should be given to the fact that defendant's device is also patented. The claims of the Schrader patent No. 1, 575,647 (R. p. 158), under which petitioner justifies, make it evident that the Patent Office has allowed broad claims exactly descriptive of defendant's structure and this notwithstanding the existence of plaintiffs' patent. We, therefore, ask that the Court give defendant the benefit of this presumption which the Supreme Court in the above cited cases says a defendant is entitled to.

The subject-matter of the two following captions relating to certain mechanical items is possibly unnecessary in view of our previous discussion, but in case the Court might

care to consider these, we will briefly refer to one of the principal prior art patents to Keil and to petitioners' Schrader patent, under which petitioner justifies and which was given full consideration by Judge Dickinson near the bottom of page 672, 20 Fed. 2d, but which seems to have been ignored entirely by the Court of Appeals for the Seventh Circuit.

KEIL PATENT NO. 554,448, February 11, 1896 (R. p. 88).

Keil shows a latch lever 7 having arms 4 and 5 which will automatically lock when the door is slammed when said lever stands in a horizontal or vertical position. Keil's statement of invention lines 9 to 24, page 1 of the Keil patent is just readable on the plaintiff's contrivance as on Keil.

> "This invention relates to that class of door clamps and openers in which a lever having suitable studs to engage a keeper is utilized to force a door tightly to its seat when moved in one direction, to start or 'pry' the door open when moved in the other direction, this type of invention being particularly adapted for refrigerator or other doors which require an absolutely tight closure.
>
> The object of my invention is to produce a simple device of the type mentioned, one which is certain in operation, of small cost, and which will both clamp and start the door in a direct horizontal plane without tendency to move the door in any direction other than that for which its hinges provide."

In Keil the keeper is mounted on the door casing and the latch lever 7 is mounted on the door just as in plaintiffs' patent. If any broad construction is attempted to be given plaintiffs' patent as being for a latch lever which will trip and lock in a vertical or horizontal position plus a co-acting keeper, it is manifest that such construction is present in the Keil patent which has been public property ever since the year 1913.

In the plate facing this page, we have reproduced the Keil patent drawings with the latch lever 7 colored red, the arms 4 and 5 colored green and the keeper 8 yellow; Keil's yellow keeper 8 is mounted on the door casing and the red latch lever 7 is pivotally mounted on the door between its ends precisely as in plaintiffs' patent. One end of Keil's lever is formed into an operating handle and the other into a keeper engaging green arm 5. Keil has a second green arm 4 projecting from the handle portion of the lever a short distance from its pivot. Keil's yellow keeper 8 is formed with an outer or inwardly inclined wall 9 for engagement with the respective green arms 5 and 4 when the lever is in horizontal or vertical positions respectively, as the door is closed, automatically to operate the lever, so that the arm 5 will engage under the keeper, when the door is entirely closed.

When Keil's red lever 7 is standing horizontal and the door carrying the lever is slammed shut, the pin 4 will engage the upper portion of the inclined wall 9 which will throw the lever 7 into the position seen in Fig. 4, then into the position seen in Fig. 3, and then into the locked position seen in Keil's Fig. 2. Hence, the Keil lever will lock when the door is slammed, no matter whether the lever is standing horizontal or vertical or in any intermediate positions. Keil's arms 4 and 5 are parallel, whereas plaintiffs' arms 12 and 9 are at right angles to each other, but the record and the patent are silent as to any different or improved function or result being attained by plaintiffs' right-angled arm contrivance over Keil's parallel arm arrangement.

The ultimate function of the arms in both the Keil and Winters & Crampton structures is identical, to wit, to effect a tripping of the latch lever by the co-action of the arms with the keeper, no matter whether said latch lever stands horizontal or vertical.

PETITIONER'S (DEFENDANT'S) DEVICE.

The defendant's device which has been held **not to infringe** in the Third Circuit and to infringe in the Seventh

H. F. KEIL.

LATCH.

Patented Feb. 11, 1896.

Fig. 1.

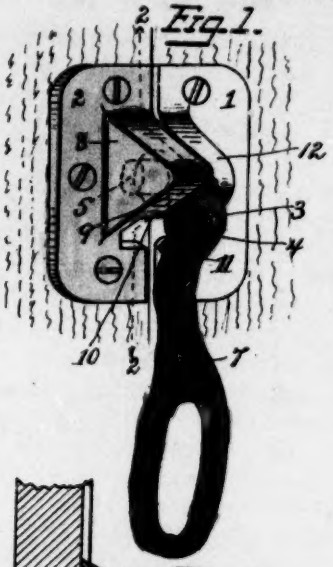


Fig. 6.

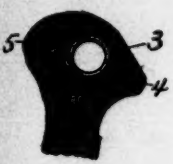


Fig. 5.



Fig. 2.

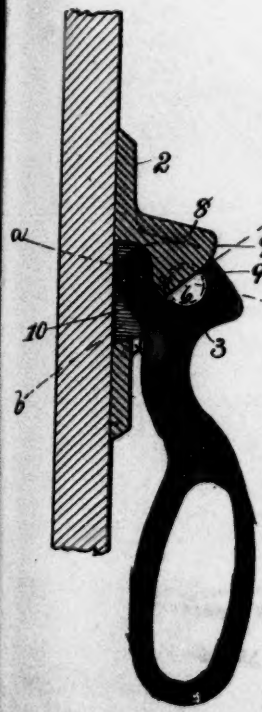


Fig. 3.

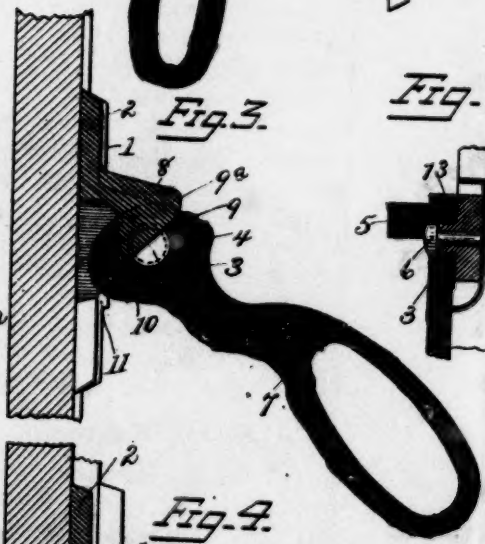
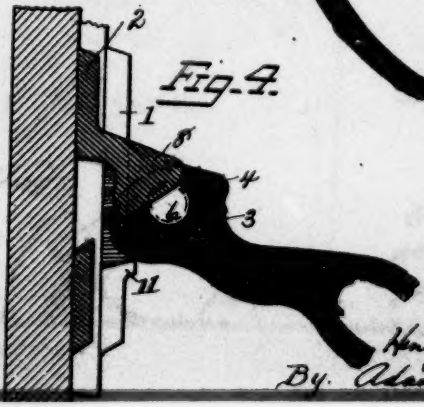


Fig. 7.



Fig. 4.



WITNESSES.

Albert Popking.

INVENTOR.

Henry F. Keil

By. Adam E. Sibert

March 9, 1926. 1,575,647

T. O. SCHRADER

LOCK DEVICE FOR REFRIGERATOR DOORS

Filed June 30, 1925

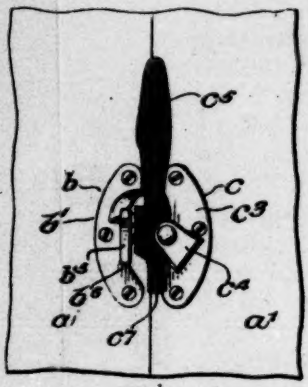


Fig. 1.

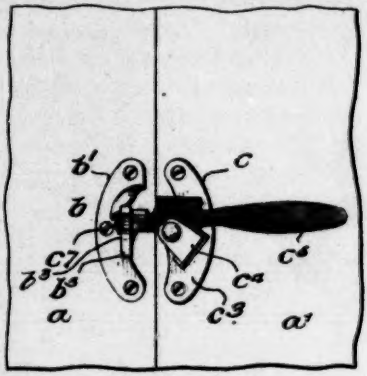


Fig. 2.

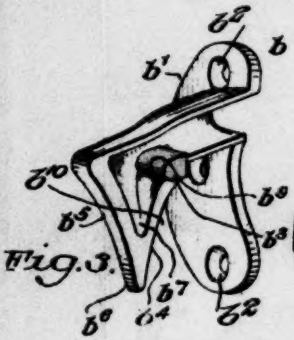


Fig. 3.

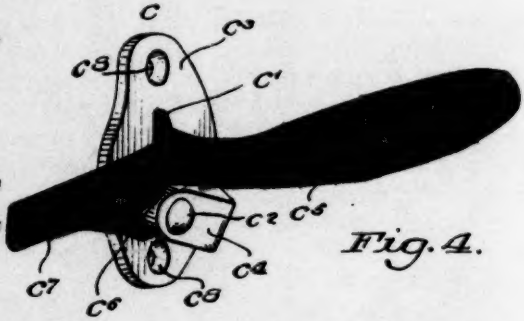


Fig. 4.



Fig. 5.

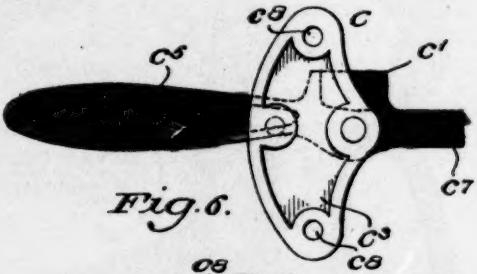


Fig. 6.

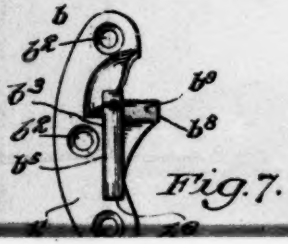


Fig. 7.

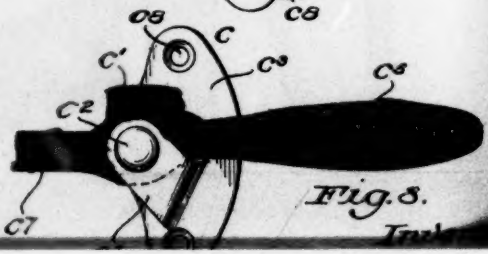


Fig. 8.

Inv

Circuit is constructed as seen in defendant's Schrader patent No. 1,575,647 (R. p. 156), and comprises a keeper of an entirely different construction and a latch lever of an entirely different character from the plaintiffs'. The plaintiffs' keeper, as we have explained, is old. The top edge of the plaintiffs' keeper trips the plaintiffs' latch when standing vertical. The top edge of defendant's keeper has no function whatever. As seen in Fig. 3 of the defendant's patent No. 1,575,647, facing this page defendant's keeper has a lateral yellow pin b^8, which is adapted to contact with the cam c^1. (See Fig. 4 of defendant's patent). The upper edge of defendant's keeper has no co-action whatever with the latch. The defendant's lever has no arm corresponding to the right-angled arm 12 of the plaintiffs' patent 1,385,102. Instead, defendant has a curved obliquely arranged cam face c^1 which co-acts with the lateral pin or lug b^8 projecting from the inside wall of the keeper. While defendant's patent No. 1,575,647 was pending in the Patent Office, the Patent Examiner, with entire propriety, cited the plaintiffs' patent in suit No. 1,385,102. A disclaimer in defendant's patent was accordingly inserted, at the bottom of page 2, lines 57 to 74, of defendant's patent, reading as follows:

> "I am aware of Patent No. 1,385,102, dated July 10, 1921, and I disclaim the structure therein disclosed, as my invention is differentiated therefrom, since whereas the structure disclosed in said patent utilizes a pin 12 carried by the latch arm 11, which co-acts with an upper cam edge 18 of the keeper member 17; in my novel construction the upper edge of my keeper plate b^3 has no function, but the pivotal latch c^6 carries a cam c^1 inclined to the pivot of said latch and adapted to co-act with a pin b^8 carried by and laterally projecting from the inner wall of the keeper plate b^3 thereby to swing the terminal tongue of the latch into the horizontal locking position; and to none of the constructions of the prior art do I herein make claim." (R. bottom of p. 158.)

It, therefore, clearly appears that the Patent Office was fully appreciative of the fact that petitioner's construction

was structurally and functionally different from respondent's patent and structure and petitioner's patent was accordingly allowed.

CONCLUSION.

We do not understand that we are called upon or expected by the Court, at this time, to go into any extended discussion of the record. We understand it to be our privilege and duty only at this time to point out to the Court such salient facts and conditions present without contention in this record, upon which this Court can easily see without going into the record as to those matters, that a sufficient ground exists on the part of petitioner for the granting of the writ of certiorari as prayed in its behalf, and to this end we have briefly marshalled in crystallized form our principal several points relied upon, and briefly our reasons therefor. It is therefore submitted,

First, that there is a diversity of opinion between the Federal Courts of the Seventh and Third Circuits;

Second, that the seeming violation by the Court of Appeals for the Seventh Circuit of the decisions of this Court as to the scope to be given the claims of respondents' narrow, limited, secondary patent render the grant of the writ of certiorari peculiarly proper in the interest of substantial justice and for final settlement of what scope is to be given to said claims 1, 2, 3, 4 and 7 of the Winters and Crampton patent for the remainder of its term throughout the United States and the Territories thereof.

It is, therefore, earnestly believed that this case is one which the writ of certiorari should issue.

Respectfully submitted,

E. HAYWARD FAIRBANKS,

Counsel for Petitioner.

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IN THE

Supreme Court of the United States

No. [redacted] 14

OCTOBER TERM, 1928

ALEXANDER F. WINTERS, AND
BASIL R. CRAMPTON, PETITIONERS

vs.

DENT HARDWARE COMPANY,
RESPONDENTS

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT.

FRANK E. LIVERANCE, JR.,
Grand Rapids, Michigan,
JOHN BOYLE, JR.,
Washington, D. C.,
Counsel for Petitioners.

TRI-ART PRINTING CO., GRAND RAPIDS, MICH.

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No. _____

ALEXANDER F. WINTERS, AND
BASIL R. CRAMPTON, PETITIONERS

vs.

DENT HARDWARE COMPANY,
RESPONDENTS

PETITION FOR WRIT OF CERTIORARI

May It Please The Court:

The petition of Alexander F. Winters and Basil R. Crampton respectfully shows to this Honorable Court:

SUMMARY STATEMENT OF THE MATTER INVOLVED

The matter involved in this case is that of infringement of claims numbered 1, 2, 3, 4 and 7 of a certain patent issued to the petitioners having No. 1,385,102 granted July 19, 1921 for Latch. (R. p. 104 et seq.)

The Court of Appeals for the Third Circuit has found these claims valid but not infringed by the structure of latch manufactured by the respondent. The opinion of the Third Circuit Court of Appeals has not as yet been

published in any report but is in the Record, page 208. It was handed down October 4, 1928; rehearing denied October 31, 1928.

The Court of Appeals for the Seventh Circuit has not only found these claims numbered 1, 2, 3, 4 and 7 of the aforesaid patent valid, but has also found the same to be infringed in the case of Winters, et al., vs. Sanitary Refrigerator Company, reported in 24 Fed. (2d) 15.

The latch structure used by the Sanitary Refrigerator Company was purchased from the Dent Hardware Company, respondent herein, so that the charged infringing structures in both cases, that before the Third Circuit Court of Appeals and that before the Seventh Circuit Court of Appeals are identical. The patent charged infringed is the same.

There is, therefore, a conflict in opinion with respect to the matter of infringement of claims 1, 2, 3, 4 and 7 of United States Patent 1,385,102 in the Court of Appeals for the Third Circuit and in the Court of Appeals for the Seventh Circuit upon identical structures before said courts.

The Supreme Court of the United States on October 15, 1928, granted a Petition for Certiorari to the Circuit Court of Appeals for the Seventh Circuit in the case of Sanitary Refrigerator Company vs. Winters, et al., supra.

REASONS RELIED ON FOR THE ALLOWANCE OF THE WRIT

1. The conflict of opinion upon the same subject matter throughout which exists between the Circuit Court of Appeals for the Seventh Circuit and the Circuit Court

of Appeals for the Third Circuit requires a determination and settlement of the conflict by this Honorable Court, as otherwise the construction of latch involved in this suit manufactured by the Dent Hardware Company can be freely manufactured and sold in the States of New Jersey, Delaware and Pennsylvania and be prohibited from manufacture, use or sale in the States of Wisconsin, Illinois and Indiana; and whether or not said structure of latch manufactured by the Dent Hardware Company can be manufactured, used or sold in the remaining territory of the United States will be undetermined and likely result in extensive litigation.

2. The decision and opinion of the Court of Appeals for the Third Circuit was handed down nearly five months after the publication in the Federal Reporter of the findings of the Court of Appeals for the Seventh Circuit upon the same state of facts. The judgment of the Circuit Court of Appeals for the Seventh Circuit finally and conclusively determined the questions of validity and infringement of claims 1, 2, 3, 4 and 7 of petitioners' patent No. 1,385,102. While the appeal of the Sanitary Refrigerator Company to the Circuit Court of Appeals for the Seventh Circuit was an interlocutory appeal, the judgment of the Circuit Court of Appeals for the Seventh Circuit was final and conclusive and was res judicata with respect to the same questions between the same parties or their privies before the Court of Appeals for the Third Circuit; involving the same claims of the same patent, the same charged infringing structure and involving the same parties, inasmuch as the defense for the Sanitary Refrigerator Company in the case before the Seventh Circuit Court of Appeals was

assumed by the Dent Hardware Company, who hired counsel, paid the bills and costs of litigation and directed completely the defense of the suit brought by petitioners against the Sanitary Refrigerator Company (Rec. p. 20.)

3. The Court of Appeals for the Third Circuit, therefore, erred in the following particulars:

1. The opinion is erroneous in holding that claims 1, 2, 3, 4 and 7 of the Winters and Crampton patent, (Rec. p. 104 et seq.) are not infringed by the device of latch structure manufactured and sold by the Dent Hardware Company made in substantial accordance with the disclosure of the Schrader patent, 1,575,647, (Rec. p. 146 et seq.)

2. The opinion is erroneous in finding that the differences in structure between the latch illustrated, described and claimed in the Winters and Crampton patent and in the latch structure manufactured by the Dent Hardware Company in substantial accordance with said Schrader patent aforesaid, affect a different principle of operation, and that the earlier patents in the latch art require a construction of said claims 1, 2, 3, 4 and 7 of the Winters and Crampton patent such that the Dent Hardware Company does not infringe.

3. The opinion is erroneous in not finding that such differences in construction as appear are differences in form only without change of function, operation or modus operandi and involve merely a reversal in parts of the kind which, in the sense of the patent law, does not change in the least the identity

which the respondent's latch structure has with the patent in suit. And, therefore, the court erred in not finding infringement even under the most restricted and limited construction which the claims of the patent in suit could have where the identity in the sense of the patent law is complete and absolute.

4. The court erred in not finding that the questions of validity and infringement had been finally and conclusively determined, as between the parties, by the Court of Appeals for the Seventh Circuit involving the same patent, the same charged infringing structure and the same parties in the sense that the Dent Hardware Company was privy to the Sanitary Refrigerator Company and is concluded by the final and conclusive judgment rendered against the Sanitary Refrigerator Company by the Seventh Circuit Court of Appeals upon the questions of validity and infringement, of which judgment of the Seventh Circuit Court of Appeals the Circuit Court of Appeals for the Third Circuit had knowledge, and which it directly referred to in its opinion.

WHEREFORE, your petitioner respectfully prays that a writ of certiorari be issued out of and under the seal of this Honorable Court, directed to the Circuit Court of Appeals for the Third Circuit, commanding that court to certify and send to this Court for its review and determination, on a day certain to be therein named, a full and complete transcript of the record and all proceedings in the case numbered and entitled on its docket, No. 3727, October Term, 1927, ALEXANDER F. WIN-

TERS and BASIL R. CRAMPTON, Appellants vs. DENT HARDWARE COMPANY, Appellee, and that the said judgment of the Court of Appeals for the Third Circuit may be reversed by this Honorable Court, and that your petitioners may have such other and further relief in the premises as this Honorable Court may seem meet and just; and your petitioners will ever pray.

ALEXANDER F. WINTERS AND
BASIL R. CRAMPTON.

By Frank E. Liverance, Jr.,

John Boyle, Jr.,

Counsel for Petitioners.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1928

No._____

ALEXANDER F. WINTERS, AND
BASIL R. CRAMPTON, PETITIONERS

vs.

DENT HARDWARE COMPANY, RESPONDENTS

BRIEF IN SUPPORT OF PETITION FOR CERTIORARI

I.

THE OPINIONS OF THE COURTS BELOW

The opinion in the Circuit Court of Appeals for the Third Circuit has not been reported. It was handed down October 4, 1928 and is printed in the record, (R.208).

The opinion of the Circuit Court of Appeals for the Seventh Circuit is reported in 24 Fed. (2d) 15.

II.

JURISDICTION

1. The date of the judgment to be reviewed is October 4, 1928, (R. 208). Rehearing denied October 31, 1928, (R. ~~227~~ 231).

2. In the Circuit Court of Appeals for the Third Circuit the claims of patent 1,385,102, numbered 1, 2, 3, 4 and 7, while found valid where held not to be infringed by the structure of latch manufactured by the Dent Hardware Company.

In the Circuit Court of Appeals for the Seventh Circuit the same claims of the same patent were not only held valid but were held infringed by the structure used by the Sanitary Refrigerator Company, which bought the latches from the Dent Hardware Company. The same construction of latch charged infringed was before both of the Circuit Courts of Appeals and the patent passed upon was the same before both courts.

The opinion and judgment of the Seventh Circuit Court of Appeals finally and conclusively determining the questions of validity and infringment were handed down and entered March 6, 1928 (24 Fed. (2d) 15). The Third Circuit Court of Appeals was informed of this fact, knew of it and recognized the same in its written opinion.

The defending parties in the two suits before the Circuit Court of Appeals for the Seventh Circuit and the Circuit Court of Appeals for the Third Circuit were in privity, the Dent Hardware Company assuming the defense for the Sanitary Refrigerator Company in the suit brought against it, hiring the counsel, paying the bills, directing the furtherance of the appeal to the Court of Appeals for the Seventh Circuit and standing in the place of the Sanitary Refrigerator Company, (R.20). These facts were known to the plaintiffs.

3. The jurisdiction of the Supreme Court in the present cause is invoked under section 347, Chapter 9, Title 28 United States Code, (Judicial Code, Section 240, Amended) as follows:

> "(a) In any case, civil or criminal, in a Circuit Court of Appeals, or in the Court of Appeals of the District of Columbia, it shall be competent for the Supreme Court of the United States, upon the petition of any parties thereto, whether Government or litigant, to require by certiorari, either before or after the judgment or decree by such lower court, that the cause be certified to the Supreme Court for determination by it with the same power and authority, and with like effect, as if the cause had been brought there by unrestricted writ of error or appeal."

4. Rule 35 of the Rules of the Supreme Court of the United States, paragraph 5, is believed to not only sustain the jurisdiction of the Supreme Court, but to indicate circumstances under which a writ of certiorari will be granted as in a case like the present one. Said paragraph 5, insofar as it pertains to the present case, is as follows:

> "5. The review of writ of certiorari is not a matter of right, but of sound judicial discretion, and will be granted only where there are special and important reasons therefor. The following, while neither controlling nor fully measuring the court's discretion, indicate the character of reasons which will be considered: * * *
>
> b. Where a Circuit Court of Appeals has rendered a decision in conflict with the decision of another Circuit Court of Appeals on the same matter; * * *"

III.

STATEMENT OF THE CASE

A summary statement of the facts of the case and of the matters involved, a reference to the conflicting opinions of the Third and Seventh Circuit Courts of Appeals, the identity of the matters before the two Circuit Courts of Appeals, and the fact that the Supreme Court has already granted a petition for certiorari to the Seventh Circuit Court of Appeals in the case with which the opinion and judgment of the Third Circuit Court of Appeals conflicts, are set forth in the petition for certiorari, and repetition thereof is not here thought necessary or desirable.

IV.

SPECIFICATION OF ERRORS

The specification of the errors is also set forth in paragraph 3 under the heading "Reasons Relied On For The Allowance of the Writ" in the petition, and for the sake of brevity is not repeated at this point.

V.

ARGUMENT
SUMMARY OF ARGUMENT

Point A. There is complete and absolute identity of the latch structure disclosed in patent 1,385,102 in suit with the latch structure manufactured by the respondent herein in the sense of the patent law. Such changes as appear being merely changes involving reversal or transposition of two parts or elements of a combination,

all of the rest being physically identical, without change in function or principle of operation, there is identity under the patent law.

Union Paper Bag Mac. Co., et al, vs. Merrick Murphy, et al., 97 U. S. 120; 24 L. Ed. 935.
Hoyt vs. Horn, 145 U. S., 302; 36 L. Ed. 713; 12 Sup. Ct. 922.
Delvin, et al, vs. Paynter, et al, 64 Fed. 398.
Anchor Cap & Closure Corp., vs. Prichard, 232 Fed. 156.
Crown Cork & Seal Co., vs. Aluminum Stopper Co., 108 Fed. 845.
Walker on Patents, 5th Ed., Sec. 348, Page 432.
Columbia Wire Co., vs. Kokomo Steel & Wire Co., 143 Fed. 116.
Walker vs. Giles, et al., 218 Fed. 637.
Simplex Window Co., vs. Hauser Reversible Window Co., 248 Fed. 919.
Telescope Cot & Bed Co., vs. Gold Medal Camp Furniture Mfg. Co. 229 Fed., 1002.
Pittsburgh Water Heater Co., vs. Beler Water Heater Co., 228 Fed. 674.

Point B. The improvement in latches, defined in claims 1, 2, 3, 4 and 7 of patent 1,385,102, is meritorious as evidenced by its immediate acceptance, large sales and substantial supplanting and superseding of other springless pivoted lever refrigerator latches. It was an important and meritorious improvement in the refrigerator latch art. Whether a pioneer or an improvement patent, a meritorious patent is entitled to liberal treatment and to the application of the rule, "ut res magis valeat quam pereat."

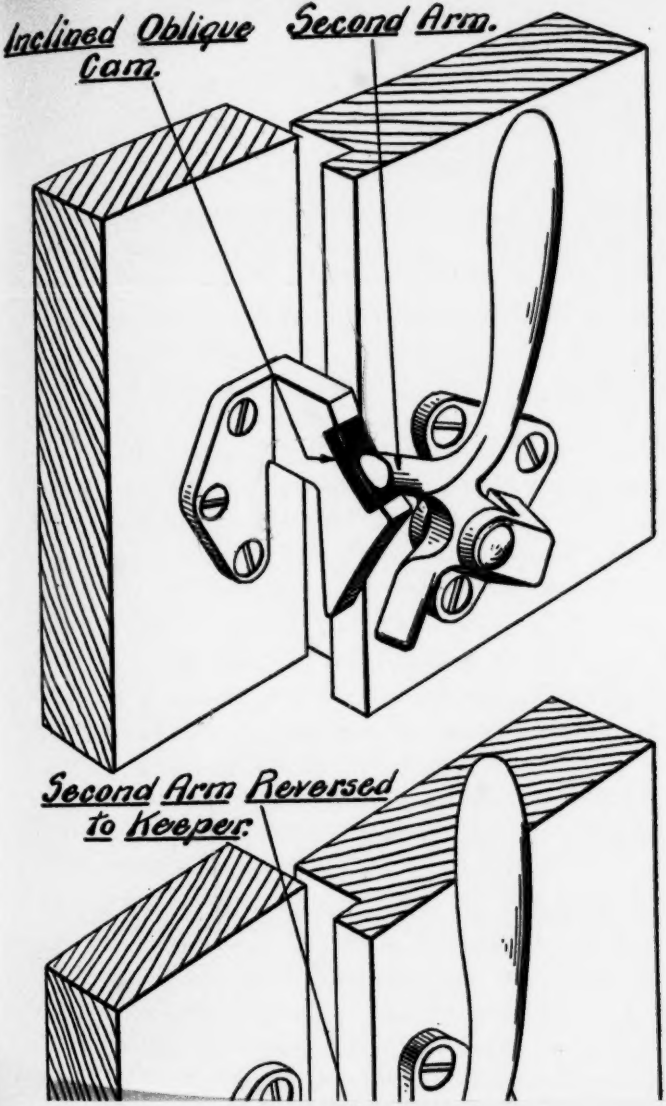
Eibel Process Co. vs. Minnesota & Ontario Paper Co., 261 U. S. 45; 43 Sup. Ct. 322.

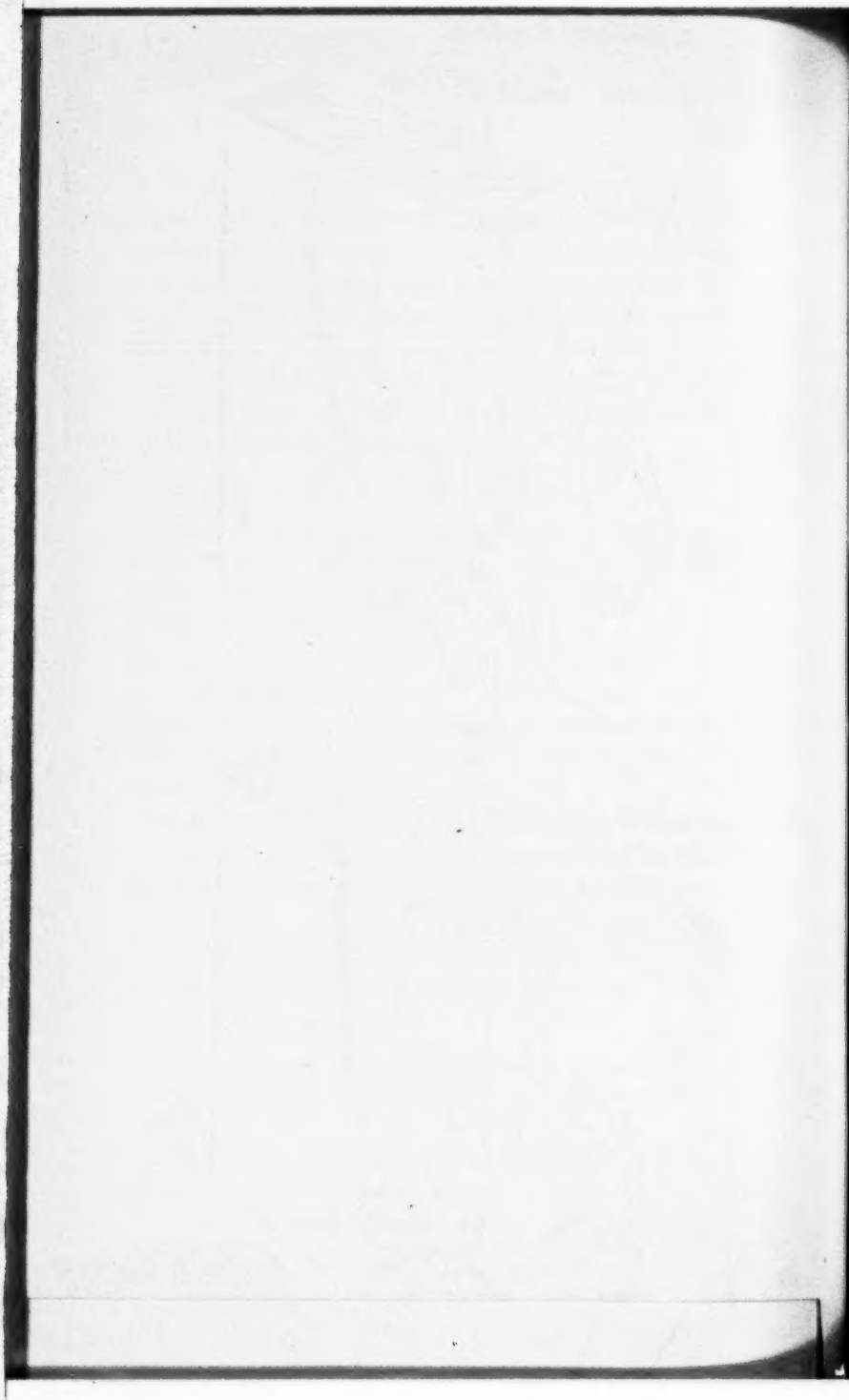
Point C. The prior patents and earlier structures considered by the Court of Appeals for the Third Circuit do not have the inventions of the patent in suit and do not necessitate any such destructive construction of claims 1, 2, 3, 4 and 7 of said patent 1,385,102 as held by the Circuit Court of Appeals for the Third Circuit, where all of said claims have been held valid, are of different scope and are not limited by reason of failure to claim the invention.

Point D. The failure of the Third Circuit Court of Appeals to give effect to the prior decision and judgment of the Seventh Circuit Court of Appeals constitutes error where there is requisite identity of the subject matter and privity between the parties as here established. The prior judgment of the Seventh Circuit of Appeals upon the question of validity and infringement, which questions were the same in both suits, is final and conclusive, notwithstanding the appeal to the Seventh Circuit Court of Appeals was interlocutory and the judgment which finally and conclusively determined the questions of validity and infringement also referred the matter back to the District Court for an accounting.

Hart Steel Co., et al., vs. Railroad Supply Co., 24 U. S., 294; 61 L. Ed. 1148.
Brady vs. Daly, et al., 175 U. S. 148; 44 L. Ed. 109.
Smith vs. Vulcan Iron Wks., 165 U. S. 524; 41 L. Ed. 810.
Southern Pacific Railroad Company, et al., vs. U. S. 168, 1; 42 L. Ed. 355.
Last Chance Mining Co., et al., vs. Tyler Mining Co., 157 U. S. 683; 39 L. Ed. 859.
Bissell Carpet Sweeper Co., vs. Goshen Sweeper Co., 72 Fed. 545.

Plaintiffs' Latch.





POINT A

IDENTITY

The Winters and Crampton patent No. 1,385,102 is in the Record (page 104, et seq.). The infringing latch structure manufactured by the Dent Hardware Company is made in substantial accordance with a subsequent Schrader patent No. 1,575,647 (R. 146 et seq.). The actual latch manufactured by the Dent Hardware Company is slightly different in design from the latch illustrated in the Schrader patent, the oblique arcuate lever c^1 being straight rather than arc shaped in form, while the head of the keeper, shown in Fig. 3 of the Schrader patent, in design very closely approximates the head 17 of the Winters and Crampton patent in suit, as shown in Figs. 2, 5 and 7 (R. 104, 106).

In order that the construction of the latch of petitioners' patent in suit and the latch as manufactured by the respondent herein may be compared, the latches have been illustrated in the accompanying cut under the heading Plaintiffs' Latch and Defendant's Latch, the first being the latch of the patent and the other the Dent Hardware Company latch.

Constructively, these latches have physical identity in many respects. The latch structures attached to the swinging doors of refrigerators, each have a fixture permanently secured to the door, including a base, an outwardly extending post and a lateral arm at the outer end of the post which is spaced from and parallel to the base of the fixture. A latch lever is used in both instances located between the base and the overhanging arm and is pivotally mounted on the fixture at a point

between its ends. At one side of the pivot, the lever is formed into an operating handle and at the other side it is an arm, hereafter called the *first* arm, or *keeper engaging* arm. The lever in both latches freely swings in a plane parallel to the face of the door, because of such mounting, through an arc of substantially 90° from a horizontal to vertical position and vice versa. The outwardly extending post of the fixture noted in both cases stops the lever when it reaches horizontal position by reason of interposing the upper side of the post in the path of movement of the handle side of the lever; and stops the lever in vertical position by reason of the interposition of the lower side of said post in the path of the movement of the keeper engaging arm.

The latch of the patent in suit has a *second* arm projecting laterally from the handle side of the lever toward the keeper. The latch manufactured by Dent Hardware Company has an inclined oblique cam projected laterally in the same direction from the same handle side of the lever.

The keeper structures attached to the door jambs of refrigerators have physical identity in the base immediately secured to the door jamb, the outstanding post projecting from the base and the depending hook head, in the lower cam edge at the outer side of the head, the inclined rear edge at the back of the depending hook and the recess into which the first or keeper engaging arm of the lever in both latches engages when the door is latched in closed position.

The keeper construction of the patent in suit has an inclined oblique cam indicated at 18 (R. 106) and indi-

cated in solid black in the cut in this brief. The keeper structure of the Dent Hardware Company, has a laterally projecting pin at the side of the hook head, indicated at b^s, Fig. 3, of the Schrader patent (R. 146).

It is the position of petitioners herein that the Dent Hardware Company has made a physical alteration of the latch of the patent consisting only and merely in transposing or reversing the *second* arm of the lever in petitioners' patent to the head of the keeper interchanging it with the inclined oblique cam at the upper outer edge of the keeper in petitioners' latch to the handle side of the lever, without disturbing in any respect the cooperation of these parts one with the other; and that such mere reversal or transposition of parts without breaking up the combination, or the cooperative relation of the parts and without affecting in the slightest the modus operandi of the combination, is a complete and direct appropriation of the entire invention made, even to the most minute details, on the ground that, in the sense of the patent law, identity is not disturbed by such mere alteration in form which in no way changes the principle of operation, the action, the function or, in the sense of the patent law, the structure of petitioners' patent.

Mere reversal of two co-acting parts in a combination machine where such parts act after the reversal the same as they did before is identity under the law of patents.

It is believed that this contention is completely and thoroughly settled in the authorities cited in the summary with reference to this point of the argument.

The question then resolves itself down to whether or not the latch used by the respondent consists merely of a reversal of the inclined or oblique cam, at the upper outer edge of the keeper head in petitioners' patent, to the lever, and a reversal of the second arm from the lever to the keeper; or whether there was something more than this done so as to obtain the results in a different manner and in accordance with a different principle.

The cooperation of the second arm on the lever of petitioners' patent in suit and the upper outer cam edge of the keeper head takes place in opening the door and also in closing the door when the lever is in its vertical position. In opening the door the inner side of said second arm rides on the outer surface of the cam edge 18 of the keeper head, prying the door open, if for any reason it is tight or sticks, as many times happens with refrigerators, due to swelling because of moisture.

In the latch made by the Dent Hardware Company the inner side of the inclined oblique cam, which has been transferred to the lever, rides against the outer side of the lug or second arm on the keeper which has been transferred to it from the lever and the door is opened, even though it should stick, by reason of the wedging cam action between the cam on the lever and the lug or pin, or second arm, (or whatever it may be called) on the keeper in exactly the same way and with exactly the same pivotal movement imparted to the lever.

In closing the door with the latch structure of petitioners' patent with the lever in vertical position, the

inner side of the second arm strikes and rides against the upper outer edge 18 of the keeper head with an automatic turning of the lever in a clockwise direction into engagement with the keeper hook. With the latch made by the respondent the inner side of the inclined oblique cam which has been transferred from the keeper to the lever strikes and rides against the upper outer side of the second arm which has been transferred to the keeper, with a like automatic clockwise movement of the lever into engagement with the hook of the keeper.

There has now been no new combination made by this mere reversal of one stationary and one movable part which in their reversed positions cooperate in the same way by having the same relative movements with respect to each other. This is the kind of change in the relative position of the parts of a machine meant in the first sentence of the first paragraph of Section 348 of Walker on Patents, where the change in relative position in no way affects the respective functions of the parts which have been changed. It is not a change like that referred to in the second paragraph of Section 348 of Walker on Patents, where the changing has so changed the functions of the parts that the machine is a new machine with a substantially different mode of operation.

The modes of operation of the latch of the patent in suit and of the latch used by the respondent are identical in every respect. There has been no change in function and the only thing that can be said, and which was urged before the Circuit Courts of Appeals for both the Third and Seventh Circuits, namely, that the location of the inclined oblique cam on the latch used by petitioner is

closer to the pivot of the lever than is the second arm in the latch of the patent, while the lug or reversed second arm on the keeper head is located inward from the outer upper edge of said keeper head, thereby making a closer coupling of the two cooperating parts (the second arm and the inclined cam), is merely a slight change in the leverage and makes only a slight difference in degree of the force which may be secured in opening a door which sticks, though the way that the door is pried open remains exactly the same.

Most rearrangements and reorganizations of elements which make a new invention, in fact, it is believed all of such reorganizations and rearrangements which really make a new combination, are reorganizations and rearrangements which go far beyond merely reversing two cooperating parts, one of which is stationary in the device of the patent and the other of which is movable, while in the charged infringing device the stationary and movable parts have been merely reversed. Mere reversal of this kind has always been, it is submitted, considered identity in the sense of the patent law irrespective of how strict a construction is made of the claims of a patent. For the question of the breadth or scope of the patent becomes merely academic as stated on page 160, 232 Fed. of Anchor Cap & Closure Co., v. Prichard, Supra, where there has been a faithful copying of the patented mechanism except for such mere reversal; because, in fact, in such cases, in the sense of the patent law, there is absolute and complete identity which will bring the infringing article within the scope of any valid claim of the patent whatever its construction may be.

POINT B

PATENT IN SUIT MERITORIOUS AND ENTITLED TO LIBERAL TREATMENT

The latch structure of patent 1,385,102 was immediately taken by the refrigerator trade, 90% of the volume of commercial refrigerator latches was supplied by the latch of this patent (R. 18, 34), over two million had been sold at the time the testimony was taken in the suit before Judge Geiger in Milwaukee, (R. 38) as appears by the numbers listed for the different sizes in plaintiffs' exhibit 8, (R. 117) for the years 1921 to 1926 inclusive. About four hundred thousand were sold in the year 1925 and one of the inventors, Mr. Crampton, (R. 19) again stated that 90% of the commercial refrigerators bought their latches from his company.

The Condit latch was noted by the witness Crampton (R. 34) and its defects pointed out; and such Condit latch was very much in production and being extensively used when the patent in suit came on the market.

Four hundred thousand latches of the new type and of the springless automatic swinging lever type, as distinguished from the automatic spring latch, must have supplanted and superseded to a large extent the springless swinging lever latches of the Condit type before the advent of the patent in suit.

Commercial success alone is not necessarily material to the question of the inventive improvement made when a new structure comes on the market. But in an art like the refrigerator latch art, which had been worked extensively for a great many years, where there were innumerable latch structures available which had been in

practical use on refrigerators prior to 1920, it is submitted that a new latch entering such field with immediate success such that it renders obsolete other latches like the Condit, previously used, or other springless swinging lever latches of the Dent type, made in accordance with the Dent patent 670,506, (R. 120 et seq.) is evidence of a very meritorious invention and one of no low order or mean degree.

While in no sense a pioneer in the art of refrigerator latches, the latch of the patent in suit was a very meritorious construction evidenced not only by its immediate acceptance and large sale, but by the actions of the Dent Hardware Company which had the other old swinging lever latches available to use, like the Condit latch and the Dent latch aforsaid, yet left such latches and began the manufacture of the latch which is in controversy in this suit. It left the latches which were free and open for it to use to manufacture the patented latch of petitioners with the inevitable litigation which resulted from it.

Business concerns do not deliberately undertake infrigement of a patent which will result in long, vexatious and expensive litigation unless the patented article has merit over and above things in the same art which are free for it to use without trouble. All these circumstances prove clearly, it is submitted, the merit of the patented construction which the petitioners devised. While, as in the preceding point of argument, it has been shown that in the sense of the patent law the structure manufactured by the respondent herein is identical with the patent in suit and comes within the range of even

the most narrow and restricted construction which the patent can have, the improvement which petitioners made unquestionably was meritorious and under the principles of Eible Process Co., vs. Minnesota & Ontario Paper Co., Supra, it is entitled to a liberal treatment rather than any narrow restricted treatment.

POINT C

THE PATENT FULLY CLAIMS THE INVENTION AND THE PRIOR ART NECESSITATES NO DESTRUCTIVE CONSTRUCTION OF THE CLAIMS

The patent in suit, insofar as it is before the Supreme Court, has five claims, numbered 1, 2, 3, 4 and 7 (R. 178, 179) to the invention made. The claims are of varying scope, claims 1 and 2 being specific, claim 3 the broadest claim and claims 4 and 7 of an intermediate range between the broadest and most specific claims. These claims were allowed as submitted to the Patent Office without question and (R. 168) with the Keil and Dent patents, prior examples of drop handle swinging lever springless latches, before the Examiner. The Keil latch (R. 124 et seq.) is the old and well known drop handle latch pivoted at one end and operated by manually pushing the handle in at its lower end when the door is closed. The operation is fully described lines 74 to 97 R. 125. The Dent latch (R. 120 et seq.) is of a similar type pivoted drop handle latch pivoted at one end and its operation is fully set forth in lines 72 to 91 inclusive (R. 121). One other latch, that of Charles (R. 152 et seq.) is a swinging lever latch pivoted on the door jamb, not on the door, swinging across the meeting edges of the door and door jamb. It has two arms d and e succes-

sively engaged by two inclines i and h on the swinging door to automatically turn the lever to bring the handle of the latch lever into engagement with the keeper hook g. Neither of the arms d and e ever engages with the keeper hook; and it is absolutely impossible to reverse the lever c of Charles to the door and the keeper to the door jamb and make the lever turn automatically to keeper engaging position when the door is closed.

These various prior latch patents, as well as the automatic Condit latch type, as shown in the patent to Schrader, 1,114,296, (R. 128 et seq.) illustrate in various ways pivoted or swinging latch levers all on the market prior to the time of petitioners' latch, all supplanted and superseded and rendered obsolete by the advent of petitioners' latch. Irrespective of the possibility of picking various elements here and there among the several patents, none of them have the combinations defined in the various claims 1, 2, 3, 4 and 7 of petitioners' patent in suit. The combinations defined in these claims are new, not anticipated and not restricted by the prior art merely because the prior art includes springless swinging lever latches among which can be found levers, cams, arms, keepers and the like, so long as the several elements which go to make up petitioners' latch have not been organized and combined to work on the same principle to attain the same results in any prior patent.

POINT D

RES JUDICATA

The principles upon which the doctrine of res judicata is founded are well settled. The subject matter in the

suits must be the same. The parties must be the same, that is, identical, or properly related by privity. The judgment in the earlier case must be final and conclusive of the facts which are set up as res judicata in the later case. In the event that a party in the first case is not formally the party in the second case against whom res judicata is urged, such party in the second case must have been so concerned in the first case, to the knowledge of the opposing party, that the party in the second case asked to be concluded in the judgment of the first case is, in effect, the same as the party in the first case against whom the judgment was rendered.

In the present situation there is no question as to the identity of the matters involved in the two cases before the Seventh and Third Circuit Courts of Appeals. The same patent, No. 1,385,102, the same claims of the patent, Nos. 1, 2, 3, 4 and 7, and the same structure charged infringed appear in both cases without variation in any respect.

There is no question as to the privity existing between the Dent Hardware Company and Sanitary Refrigerator Company and that such privity was known to the plaintiffs, petitioners herein. It is charged in the Bill of Complaint, (R. 7). It is admitted by the Vice-President of the Dent Hardware Company that it, in effect, though not formally on the record, substituted itself for the Sanitary Refrigerator Company in the case tried in the Seventh Circuit.

The judgment that was rendered by the Seventh Circuit Court of Appeals on March 6, 1928, finally and conclusively determined the questions of validity and in-

fringement of claims 1, 2, 3, 4 and 7 of patent No. 1,385,-102, as against the Sanitary Refrigerator Company and its privy, Dent Hardware Company.

The only disputable question, it would seem, relates to the decision and judgment of the Court of Appeals for the Seventh Circuit handed down and entered on March 6, 1928. The appeal to the Court of Appeals for the Seventh Circuit was an interlocutory appeal, as the accounting had not been determined. The Court of Appeals for the Seventh Circuit, however, had to pass upon the questions of validity and infringement of the claims of the patent and it is submitted that, notwithstanding the appeal was an interlocutory one, its judgment was final and conclusive respecting the questions of validity and infringement of the patent. It is believed that this is supported by the Supreme Court case, Smith vs. Vulcan Iron Works, Supra. All of the Circuit Courts of Appeals held before the time of such case that in a patent case where an interlocutory appeal was had to consider validity and infringement questions, and not the accounting, the decision of a Court of Appeals, whether for or against the patent, is final and conclusive as to validity and infrigement and becomes the law of the case which cannot later be reconsidered either by the Court of Appeals which renders the final and conclusive judgment or any lower court. The Supreme Court in said case of Smith vs. Vulcan Iron Works referred specifically to a case of the Sixth Circuit Court of Appeals, namely, Bissell Carpet Sweeper Co. vs. Goshen Carpet Sweeper Co., Supra, wherein Judge Lurton, later a Justice of the Supreme Court, with the concurrence of Judge Taft, now Chief

Justice of the Supreme Court, and Judge Hammond, reversed an earlier decision which had held to the contrary, bringing the practice in conformity with the other Circuit Courts of Appeals; and establishing that in a case of this kind, although the appeal is interlocutory, the questions of validity and infrigement which are decided are finally and conclusively decided and not subject thereafter to reconsideration and change.

Petitioner is aware that the matter has been decided in one of the lower courts, a District Court, directly contrary to what it now urges. This decision is of a Circuit Court of the United States, Nothern District of New York, Australian Knitting Co. vs. Gormley, 138 Fed. 92, wherein Judge Ray, because the decision had been on an interlocutory appeal, held that the judgment was not final, apparently for the reason that the Supreme Court in the years before the establishment of Circuit Courts of Appeals, in order to have jurisdiction of a patent case appealed to it, had to take the case after a final decree settling *all* issues had been entered in the court below. That is, in a patent case, before 1892 any appeal to the Supreme Court could be taken only after not only the questions of validity and infringement had been settled but also the accounting.

It is contended that the decision of Judge Ray was wrong for the reason that it is not necessary that an entire case involving different things be completed and conclusively settled as to all matters contained therein in order for res judicata to apply, but it is only necessary that the particular questions with respect to which res judicata is invoked shall be finally and conclusively

settled and determined to an extent that they cannot thereafter be reopened in the court of final resort which finally and conclusively settled such questions, or in any subordinate court under such court of final resort.

It would seem that in an analogous situation, that of Brady v. Daly, Supra, involving a copyright, the Supreme Court held that a decree which established the validity of the copyright was final and res judicata, as between the parties, even though damages were to be later collected.

Finally in a comparatively recent case of the Supreme Court, Hart Steel Co. vs. Railroad Supply Company, Supra, on Page 1153 of 61 L. Ed. the Supreme Court stated that the doctrine or res judicata was not to be considered as a mere matter of practice or procedure coming down from a more technical time, but that it should be considered as a rule of fundamental and substantial justice which should be cordially regarded and enforced to the end that rights once established by a court of competent jurisdiction should be recognized by those bound by it in every way wherever the judgment is entitled to respect.

It is, therefore, contended by the petitioners herein that the judgment rendered and entered by the Court of Appeals for the Seventh Circuit, March 6, 1928, of which the Third Circuit Court of Appeals had immediate information, which it knew of and recognized and admitted in the opinion handed down by it, (R. 208 et seq.) should have been held by the Third Circuit Court of Appeals as conclusive against the Dent Hardware Company because of the final and conclusive determination

of exactly the same questions by the earlier judgment of the Court of Appeals for the Seventh Circuit. It is submitted, that this prior judgment, though coming after an interlocutory appeal, is as final and conclusive respecting the questions involved as though it was a judgment entered at the eventual determination of the case. The questions of validity and infringement were questions distinctly put in issue and directly determined by the Court of Appeals for the Seventh Circuit which had jurisdiction thereof. They were finally and conclusively determined by the Court of Appeals for the Seventh Circuit and it is submitted that these findings 'cannot be disputed in a subsequent suit between the parties or their privies, * * *." (Southern Pacific Railroad Co. vs. United States, Supra.)

CONCLUSION

It is, therefore, respectfully submitted that this case is one calling for the exercise of this Court of its supervisory powers, in order that justice may be done, and that to such an end a writ of certiorari should be granted and this Court should review the decision of the Court of Appeals for the Third Circuit and finally reverse it.

Respectfully submitted,

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JOHN BOYLE, JR.
Counsel for Petitioners.

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DEC 29 1928
CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1928

SANITARY REFRIGERATOR COMPANY,
Petitioner,
vs.
ALEXANDER F. WINTERS,
AND
BASIL R. CRAMPTON,
Respondents.
No. 128.

ALEXANDER F. WINTERS,
AND
BASIL R. CRAMPTON,
Petitioners,
vs.
DENT HARDWARE COMPANY,
Respondent.
No. 14

CONSOLIDATED BRIEF FOR WINTERS AND CRAMPTON.

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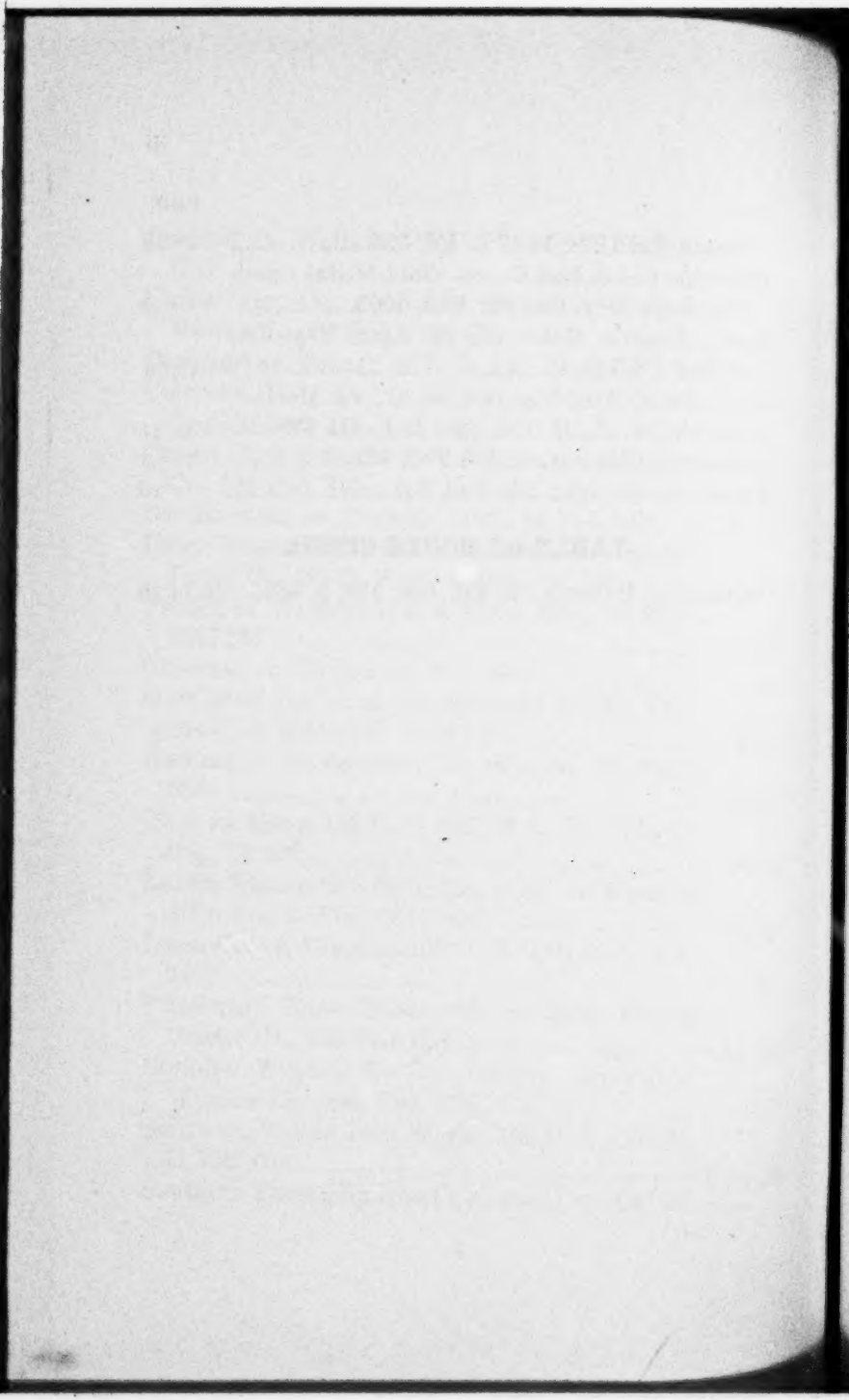
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IN THE

Supreme Court of the United States.

OCTOBER TERM, 1928

SANITARY REFRIGERATOR COMPANY,
Petitioner,
vs.
ALEXANDER F. WINTERS,
AND
BASIL R. CRAMPTON,
Respondents.
} No. 128.

ALEXANDER F. WINTERS,
AND
BASIL R. CRAMPTON,
Petitioners,
vs.
DENT HARDWARE COMPANY,
Respondent.
} No. 547.

CONSOLIDATED BRIEF FOR WINTERS AND CRAMPTON.

I.

THE OPINIONS OF THE COURTS BELOW.

The two cases above identified are before the Supreme Court of the United States because of diversity of opinion and conflict in decision on the part of the Circuit Courts of Appeals for the Seventh and Third Circuits relative to the same subject-matter.

The conflict in opinion is solely respecting the matter of infringement of certain claims, having numbers 1, 2, 3, 4 and 7, of United States Letters Patent 1,385,102, issued to Winters and Crampton on the 19th day of July, 1921, for a Latch. Both Circuit Courts of Appeals and the District Courts which heard the cases in the first instance are united in holding the claims of the patent in question valid.

The opinion of the Court of Appeals for the Seventh Circuit is reported in 24 Fed. (2d), page 15. A rehearing was denied March 6, 1928. The said claims of the patent in question were held valid and infringed.

The opinion of the Court of Appeals for the Third Circuit is reported in 28 Fed. (2d) 583, and is printed in the advance sheets of the Federal Reporter under date of December 6, 1928. It was decided October 4th, 1928, and a rehearing denied October 31, 1928. The claims 1, 2, 3, 4 and 7, of the Winters and Crampton patent in this case were held valid but not infringed. The charged infringing structure in both cases was the same, the Dent Hardware Company selling its latches to the Sanitary Refrigerator Company.

II.

STATEMENT OF THE CASE.

The Latch of Patent No. 1,385,102.

In referring to the two cases, for convenience the first, No. 128, will be termed the Sanitary Case and the second, No. 547, the Dent Case.

The patent No. 1,385,102 is in the Sanitary record, pages 69 to 73, and in the Dent record, pages 103 to 109. Five of the claims numbered 1, 2, 3, 4 and 7 (Dent R.,

pp. 108, 109) are involved in the present case. The latch, which is the subject-matter of patent 1,385,102 and disclosed in the drawings (Dent R., pp. 104, 106) includes two parts, namely, a keeper structure permanently secured to the door jamb 2 of a refrigerator and a pivotally mounted latch lever structure permanently secured to the front face of the door 1 adjacent its free vertical edge. The keeper has a flat base 14 permanently attached to the door jamb, an outwardly projected post 16 and a substantially triangular shaped head 17 having two outer cam edges or sides 18 and 19, the former at the upper outer side of the head and the latter at the lower outer side. The head depends below the post 16 whereby a hook is formed open at its under side, the head 17 having a rear inclined edge 20 inclined upwardly and inwardly toward the door jamb from its lower end, this being the part of the keeper against which one arm of the latch lever engages when the door is closed.

The pivoted lever construction includes a supporting fixture having a flat base 3 permanently secured to the door, an outwardly extending post 5 and an overhanging arm 6 spaced from and parallel to the base and to the plane of the front side of the door.

Between the base and overhanging arm 6 a latch lever 7 is mounted for a swinging movement in a vertical plane parallel to the front of the door. The lever is pivoted between its ends on a pivot pin 8. At one side of the pivot the lever is formed into an operating lever 11. At the other side the lever provides a keeper engaging arm 9, hereafter referred to as the *first* or *keeper engaging* arm. There is also a *second* arm 12 on the lever which projects laterally substantially at right angles therefrom from the handle side of the pivot.

The lever is limited in movement to a substantially 90° swing. When the door is open the lever may occupy a horizontal position, in which case the handle side of the lever engages against the upper side of the post 5 to maintain the lever horizontal. Equally well the lever may occupy a vertical position (as in Fig. 4, Dent R., p. 106) in which case a side of the first arm engages against the opposite side of the post 5 of the fixture permanently secured to the door 1.

The opposite sides of the post furnish stops, indicated at 5*a* (Dent R., p. 106, Fig. 4), which limit the swing of the lever in opposite directions and control its movements so that it must occupy either a vertical or horizontal position, yet may equally well occupy either position, and have a free swinging movement between the two positions through an arc of substantially 90°.

Should the lever be in its horizontal position when the door is open, moving the door to closed position brings the first arm 9 against the cam edge 19 (Dent R., p. 106, Fig. 6) of the keeper head and the inner cam side 10 of the arm 9 rides against the edge 19 of the keeper head thereby automatically throwing the lever toward vertical position (as in Fig. 6, Dent R., 106). This movement continues until the inner side of the second arm 12 strikes against the upper edge 18 of the head. Then upward swinging movement is rapid under the momentum of a relatively heavy refrigerator door, and when the second arm 12 strikes against the upper edge 18 of the head, the swinging movement of the lever is reversed and the lever thrown back with considerable speed, bringing the first arm 9 under the hook of the keeper and automatically wedging it against the inclined inner edge 20 of the keeper head.

This is described in lines 37 to 54, inclusive (Dent R., 108), as follows:

> "If the lever has dropped to horizontal position while the door is open the closure of the door and engagement of the lever with the keeper is accomplished by merely swinging the door shut, in which case, as shown in Figs. 6 and 7, the arm 9 strikes with its inclined cam side 10 against the lower curved side 19 of the head 17 of the keeper, causing the handle to be automatically turned to the vertical position. This movement continues until the arm 9 passes by the lower point of the keeper head 17, or, as usually occurs, the arm 12 comes into contact with the head at the upper side 18, whereupon the lever is actuated to bring the arm 9 under the depending portion of the keeper, the same as before described when closing the door with the lever in vertical position."

The lever may be and usually is in a vertical position when the door is open and the patent in an earlier part of its description describes the action, if the lever is vertical, beginning with line 16 (Dent R., 108) and ending with line 26, as follows:

> "When the door is moved toward closing position with the lever vertically located, the cam side 13 of arm 12 strikes against the curved upper side 18 of head 17, causing the lever to be automatically swung toward the horizontal, and bringing the arm 9 into place so as to pass under the lower point of the keeper head so that it may engage at its outer side against the wedging cam side 20 of the head."

In either case, whether the lever be in vertical or horizontal position, when the door is closed, merely swing-

ing the door to closed position causes the automatic wedging engagement of the first or keeper engaging arm 9 of the lever with the keeper. Such wedging engagement is effected by the rapid swinging movement given to the lever whereby the keeper engaging first arm 9 automatically wedges tightly against the inner inclined side 20 of the keeper head.

To open the door the handle 11 is grasped and swung to the upper position, as in Fig. 4 (Dent R., 106). When it is thus swung, should the door stick, as sometimes occurs because of swelling, the arm 12 rides upon the upper edge 18 of the keeper head 17 and pries the door open, the lever usually staying in its upper vertical position. It, however, is a free swinging lever and may fall to horizontal position either accidentally or because it is brushed by the clothing of one using the refrigerator to such position. Irrespective of the position of the latch lever, closing the door automatically effects a secure and tight latching and without detriment to the latch, the door or the door jamb of the refrigerator.

The Dent Latch.

The latch used by the Sanitary Refrigerator Company, manufactured and sold to it by the Dent Hardware Company, which the Court of Appeals for the Seventh Circuit held was an infringement of the Winters and Crampton patent, and the Court of Appeals for the Third Circuit held was not an infringement, is in substantial accordance with the disclosure of a certain patent to Schrader, No. 1,575,647, issued March 9, 1926, several years subsequent to the Winters and Crampton patent. This Schrader patent is shown in the Dent Record, pp. 146, 149.

Such latch, likewise, has a keeper structure permanently secured to a refrigerator door jamb and a pivoted swinging latch structure permanently secured to a refrigerator door adjacent its free vertical edge. The keeper (Fig. 3, Dent R., 146) has a flat base b1, an outwardly extending post terminating in a depending hook head, the outer edge of which, indicated at b5, is a cam edge exactly like the under outer cam edge 19 of the head of the patent in suit. Said hook head at its inner edge is also inclinded upwardly, as indicated at b4, corresponding to the inner inclined edge 20 of the patent in suit. The keeper head at the side thereof adjacent the door has a laterally projecting pin b8 with a cam side b9.

The pivoted swinging lever structure structure (Dent R. 146, Fig. 8) includes a base c3 permanently secured to the front side of the refrigerator door (as in Fig. 2), an outwardly extending post and an overhanging arm c4 spaced from and parallel to the base and front face of the door. The latch lever is pivotally mounted between its ends on a pivot pin c2, lying between the base and overhanging arm. At one side of the pivot the lever is formed into an operating handle c5 and at the other side into a *keeper engaging* or *first* arm c7. Extending laterally from the lever at the handle side of the pivot is a cam c1, shown as of arcuate form in the drawings of the Schrader patent.

The actual latch used by the Sanitary Refrigerator Company, manufactured for it by the Dent Hardware Company, as shown in the exhibits filed before the Third and Seventh Circuit Courts of Appeals, is slightly different in design from that shown in the Schrader patent. The cam illustrated at c1 in the Schrader patent is modified so as to be a substantially

straight inclined or oblique cam and not curved or arcuate as shown, while the design of the head of the keeper in the physical embodiments of the Dent latches sold to the Sanitary Refrigerator Company is a complete copying of the design of the Winters and Crampton keeper, having both the upper and lower curved outer edges to the keeper head the same as Winters and Crampton used, the only difference being that a lug or pin corresponding to the pin b8 (Fig. 3, Dent R., 146) projects laterally from the head of the keeper. The action of the latch, however, is not materially changed in any respect by these slight differences in design.

The latch lever in the latch used by the Sanitary Refrigerator Company, furnished it by Dent Hardware Company, has a free swinging movement in a plane parallel to the face of the refrigerator door, is stopped when the handle engages against the upper side of the outstanding post of the fixture on which the lever is mounted, or when in horizontal position; and is stopped when swung in the other direction by the keeper engaging arm, c7, coming against the opposite or underside of the same post. The lever freely swings through an arc of substantially 90° between its vertical and horizontal positions and may equally well occupy either position, and is quite as liable to occupy one position as the other when the door is open.

With the Dent latch, used by the Sanitary Refrigerator Company, if the latch lever should be in a horizontal position when the door is open, on closing the door the inner side of the first or keeper engaging arm c7 is brought against the lower outer edge b5 of the keeper head, automatically throwing the lever upward to the vertical position or until the inclined cam c1 strikes the pin b8, whereupon the movement of the

lever is reversed and it is swung back with considerable speed and momentum to bring the keeper engaging first arm c7 into operative wedging engagement with the inner inclined side b4 of the keeper hoop; exactly as with the Winters and Crampton latch in every respect.

If, on the other hand, the latch lever is in vertical position, closing the door brings the inclined cam c1 against the cam side b9 of pin b8 and the lever is quickly and rapidly swung in a clockwise direction to bring the keeper engaging first arm into tight wedging engagement with the keeper hook; the same as with the Winters and Crampton latch when the arm 12 (Dent R., 106, Fig. 4) engages against the inclined cam edge 18 of the keeper head as the door is being closed.

Exhibits of the latch in suit, owned by Winters and Crampton, and of the latch used by the Sanitary Refrigerator Company, manufactured for it by Dent Hardware Company, are before the court. Plaintiff's Exhibit 2, in the Sanitary suit is a mounted latch device built exactly in accordance with the disclosure of patent No. 1,385,102 in suit. Plaintiff's Exhibit No. 3, in the Sanitary suit, is a mounted latch used by Sanitary Refrigerator Company, sold to it by Dent Hardware Company. Like exhibits of mounted latches were before the Court of Appeals for the Third Circuit.

The Invention of the Patent in Suit.

Refrigerator latches have long been manufactured and used. The art entered by Winters and Crampton was an old and crowded art. Many latches, as will appear later, have been manufactured wherein an automatic tight latching of a refrigerator door upon its

closing was secured by means of spring-actuated latch levers having a spring to act on the lever to wedge it into engagement with a keeper. Pivoted latch levers of the drop handle type, that is, those which were pivoted on the door at their upper ends and depended from the pivot have been used to engage with a keeper mounted on the door jamb but such levers, in the absence of springs, necessarily had to be pushed upon by the operator in order to have a secure and tight closure of the door. Other latches had been used of the swinging lever type, swinging in a plane parallel to the face of the refrigerator, but all such latches had previously been mounted on the door jamb and swung across the meeting edges of the door and door jamb when the door was closed; and if the lever should drop to a horizontal position with the door open, the handle portion of the lever extended into the path of movement of the door so that the door could not be closed and any attempt to close the door by swinging it shut resulted in injury to either the latch or door or door jamb, usually all three occurring.

The Winters and Crampton patent in suit, No. 1,385,102 (Dent R., 107), refers to the last named type of swinging lever latch, beginning with line 9 of the description and ending with line 45, as follows:

> "This invention relates to a latch of the swing lever type, particularly adapted for use on refrigerators, though applicable in many other relations where a door is to be closed and held in closed position. The swinging lever latch, or as it is better known, the Condit latch, is pivotally connected at one end to the door jamb or casing, allowing the door to be opened when the latch is thrown to the upper vertical position, and coming down across the meeting

edges of the casing and door when swung to horizontal position, engaging with a cam member on the door to wedge the door tightly shut. This latch is a very serviceable latch but is relatively hard to operate due to its attachment to the casing instead of the door and the same is liable to drop to horizontal position, in which case the door cannot be closed without first lifting the lever to upper vertical position while, many times, the door is inadvertently swung to the closed position and against the lever in its horizontal position with injury either to the lever, or door, or both. In the present invention, it is a primary object and purpose to provide a latch which may be pivotally connected to the door and which is automatically operated to engage with a retaining member or keeper fixed on the door casing when the door is closed irrespective of the vertical or horizontal position of the lever, working as well in one case as the other."

The so-called Condit lever referred to in this extract from the description of the patent in suit, is in evidence as an exhibit, Plaintiff's Exhibit J, offered in the Dent case (Dent R., 80). The automatic Condit latch may be observed in the patent to Schrader, No. 1,114,296 (Dent R., 128), wherein it will be observed that if the door was open and the lever was in the dotted line position, shown in Fig. 1, it would stand in the way of closing the door due to the mounting of this lever on the door jamb.

The essential and salient features of the Winters and Crampton patent in suit and the practical and useful result which was to be obtained therefrom was that a swinging latch lever, analogous to the swinging lever of the Condit type shown in plaintiff's Exhibit J in the Dent suit and in the Schrader automatic Condit latch just referred to, could be mounted on the refrigerator

and when mounted, irrespective of its vertical or horizontal position, in either of which positions it was likely to be, when the door is closed the latch lever automatically engages with the keeper with a tight wedging engagement and with no liability or injury either to the latch, or door, which was very liable to occur with latches of the Condit type if the lever should inadvertently or otherwise be in a horizontal position and extend into the path of movement of the refrigerator door.

The patentees, Winters and Crampton, in the patent in suit attained this object and purpose by their construction which has been described and which is fully illustrated and specifically described as to structures and operation in their patent (Dent R., 104 *et seq.*). And in such structure of latch, if the lever is vertically positioned when the door is closed, a very rapid swinging impulse to the lever is given it in a clockwise direction, causing an automatic wedging engagement of the keeper engaging arm with the keeper; while if the lever is in a horizontal position on closing the door it is thrown upwardly in a counter-clockwise direction, there occurring an engagement of the second arm of the lever with the keeper at the upward limit of travel of the lever, and then a very rapid counter-clockwise movement of the lever which again caused an automatic wedging engagement of the keeper engaging first arm with the keeper.

This cooperation of the parts described results in making the latch a springless automatic latch, one which serves at all times to securely and tightly close and wedge the door closed, and one in which no care has to be had to see that the lever occupies a particular position prior to the closing movement of the door.

And it was this arrangement and combination and invention in a latch, on the part of Winters and Crampton, which, it is submitted, the Dent Hardware Company manufactured and the Sanitary Refrigerator Company used, mounting the same kind of lever on the door in the same place and utilizing the same type of keeper to cooperate therewith and mounted on the door jamb in the same place as did Winters and Crampton; and getting identically the same movements caused by the same cooperation of parts, working in the same manner to attain the same results of automatically wedging the door closed when it was moved to closed position irrespective of the vertical or horizontal positions of the latch lever.

III.

SPECIFICATION OF ERRORS.

The specification of errors on the part of the petitioners, Winters and Crampton, in the Dent suit is as follows:

1. The opinion is erroneous in holding that claims 1, 2, 3, 4 and 7 of Winters and Crampton patent (Rec., p. 104 et seq.) are not infringed by the device of latch structure manufactured and sold by the Dent Hardware Company made in substantial accordance with the disclosure of the Schrader patent, 1,575,647 (Rec., p. 146 et seq.).

2. The opinion is erroneous in finding that the differences in structure between the latch illustrated, described and claimed in the Winters and Crampton patent and in the latch structure manufactured by the Dent Hardware

Company in substantial accordance with said Schrader patent aforesaid, affect a different principle of operation, and that the earlier patents in the latch art require a construction of said claims 1, 2, 3, 4 and 7 of the Winters and Crampton patent such that the Dent Hardware Company does not infringe.

3. The opinion is erroneous in not finding that such differences in construction as appear are differences in form only without change of function, operation or modus operandi and involve merely a reversal in parts of the kind which, in the sense of the patent law, does not change in the least the identity which the respondent's latch structure has with the patent in suit. And therefore, the court erred in not finding infringement even under the most restricted and limited construction which the claims of the patent in suit could have where the identity in the sense of the patent law is complete and absolute.

4. The court erred in not finding that the questions of validity and infringement had been finally and conclusively determined, as between the parties, by the Court of Appeals for the Seventh Circuit involving the same patent, the same charged infringing structure and the same parties in the sense that the Dent Hardware Company was privy to the Sanitary Refrigerator Company and is concluded by the final and conclusive judgment rendered against the Sanitary Refrigerator Company by the Seventh Circuit Court of Appeals upon the questions of validity and infringement, of which judgment of the Seventh Circuit Court of Appeals the Circuit Court of Appeals for the Third Circuit had knowledge, and which it directly referred to in its opinion.

IV.

ARGUMENT.

Summary of Argument.

Point A. The failure of the Third Circuit Court of Appeals to give effect to the prior decision and judgment of the Seventh Circuit Court of Appeals, constitues error where there is the requisite identity of the subject-matter and privity between the parties as here established. The prior judgment of the Seventh Circuit Court of Appeals upon the questions of validity and infringement, which questions were the same in all respects in both suits, is final and conclusive, notwithstanding the appeal to the Seventh Circuit Court of Appeals was interlocutory and notwithstanding the judgment which finally and conclusively determined the questions of validity and infringement also referred the matter back to the District Court for an accounting.

Hart Steel Co. et al. vs. Railroad Supply Co., 244 U. S. 294; 61 L. Ed. 1148;

Smith vs. Vulcan Iron Wks., 165 U. S. 524; 41 L. Ed. 810;

Southern Pacific Railroad Company et al. vs. United States, 168 U. S. 1; 42 L. Ed. 355;

Bissell Carpet Sweeper Co. vs. Goshen Sweeper Co., 72 Fed. 545;

Larkin Automotive Parts Co. et al. vs. Bassick Mfg. Co., 19 Fed. (2d) 944;

Carson Inv. Co. et al. vs. Anaconda Copper Mining Co., 26 Fed. (2d) 651.

Point B. There is complete and absolute identity of the latch structure manufactured by the Dent Hardware Company and used by the Sanitary Refrigerator

Company with that disclosed in patent 1,385,102 in suit in the sense of the patent law. Such physical changes as appear are merely changes involving reversal or transposition of two parts or elements of a combination, all of the rest being physically identical, without change in function or principle of operation. There is identity in the patent law and infringement of the claims 1, 2, 3, 4 and 7 of patent 1,385,102 in suit no matter what the construction of said claims may be.

Union Paper Bag Mac. Co. et al. vs. Merrick Murphy et al., 97 U. S. 120; 24 L. Ed. 935;

Hoyt vs. Horn, 145 U. S. 302; 36 L. Ed. 713; 12 Sup. Ct. 922;

Delvin et al. vs. Paynter et al., 64 Fed. 398;

Anchor Cap & Closure Corp. vs. Prichard, 232 Fed. 156;

Crown Cork & Seal Co. vs. Aluminum Stopper Co., 108 Fed. 845;

Walker on Patents, 5th Ed., Sec. 348, Page 432;

Columbia Wire Co. vs. Kokomo Steel & Wire Co., 143 Fed. 116;

Walker vs. Kiles et al., 218 Fed. 637;

Simplex Window Co. vs. Hauser Reversible Window Co., 248 Fed. 919;

Telescope Cot & Bed Co. vs. Gold Medal Camp Furniture Mfg. Co., 229 Fed. 1002;

Pittsburgh Water Heater Co. vs. Beler Water Heater Co., 228 Fed. 674.

Point C. The improvement in latches defined in the claims 1, 2, 3, 4 and 7 of patent 1,385,102, is meritorious as evidenced by its immediate acceptance, large sales and substantial supplanting and superseding of other springless pivoted lever refrigerator latches. It was

an important and meritorious improvement in the refrigerator latch art. Whether a pioneer or an improvement patent, a meritorious patent is entitled to liberal treatment and to the application of the rule "*ut res magis valeat quam pereat,*" and a forbidding of the appropriation thereof by an infringer which copies the entire substance of the invention.

Eibel Process Co. vs. Minnesota & Ontario Paper Co., 261 U. S. 45; 43 Sup. Ct. 322;

Temco Electric Motor Co. vs. Apco Mfg. Co., 48 Sup. Ct. Rep. 170.

Point D. The prior patents and earlier constructions considered by the Courts of Appeals for the Third and the Seventh Circuits do not have the invention of the patent in suit and do not necessitate any such narrow and destructive construction of claims 1, 2, 3, 4 and 7 of said patent 1,385,102 as held by the Circuit Court of Appeals for the Third Circuit where all of said claims have been held valid, are of different scope and are not limited by reason of failure to claim the invention, and there has been no abandonment of any part of the invention because of failure to claim the same; and particularly do not necessitate a construction of said claims 1, 2, 3, 4 and 7 of said patent in suit whereby the invention is limited to a degree permitting the Dent Hardware Company and the Sanitary Refrigerator Company to appropriate all the advantages of the invention through a formal alteration of structure involving a mere reversal of one stationary and one fixed part without changing in any way the principle or mode of operation with a complete appropriation of the invention of Winters and Crampton.

Point E. That the latch structure manufactured by Dent Hardware Company and used by Sanitary Re-

frigerator Company is made under a subsequent patent to Schrader No. 1,575,647 (Dent R., 146 *et seq.*) is immaterial to the question of infringement. One who obtains a later patent cannot appropriate and infringe an earlier dominating patent of another without license.

Hoyt vs. Horne, *Supra;*

Temco Electric Motor Co. vs. Apco Mfg. Co., *Supra;*

Cochrane vs. Deener, 94 U. S. 780; 24 L. Ed. 139;

Cantrell vs. Wallick, 117 U. S. 689; 29 L. Ed. 1017;

Herman vs. Youngstown Car Mfg. Co. (C. C. A. 6th), 191 Fed. 579;

Yancey vs. Enright, C. C. A. 230 Fed. 641;

French vs. Buckeye Iron & Brass Wks., (C. C. A. 6th); 10 Fed. (2d) 257.

Point A.

Res Judicata or Estoppel by Judgment.

The principles upon which the doctrine of *res judicata* is founded are well settled. The subject-matter in the suits must be the same, the parties must be the same, that is, identical, or properly related by privity. The judgment in the earlier case must be final and conclusive of the facts and issues which are set up as *res judicata* in the later case. In the event that the party in the first case is not formally and on the record the party in the second case against whom *res judicata* is urged, such party in the second case must have been so concerned in the first case, to the knowledge of the opposing party, that said party in the second case

asked to be concluded by the judgment in the first case, shall, in effect, be the same as the party in the first case against whom the judgment was rendered.

In the present situation there is no question as to the identity of the matters involved in the two cases before the Seventh and Third Circuit Courts of Appeals. The same patent, No. 1,385,102; the same claims to the patent, numbers 1, 2, 3, 4 and 7; and the same structure charged infringed, appear in both cases without change in any respect.

There is no question as to the privity existing between the Dent Hardware Company and Sanitary Refrigerator Company and that such privity was known to the plaintiffs, Winters and Crampton.

It is charged in the Bill of Complaint in the Dent suit (Dent R., 7). The Vice-President of the Dent Hardware Company admitted that it, in effect, substituted itself for the Sanitary Refrigerator Company in the case tried in the Seventh Circuit. In the Dent Record, p. 20, appears the following:

> "Harry C. Dent, of Allendale, Pennsylvania, is a manufacturer of refrigerator hardware. He had heard of the suit brought by Winters and Crampton on patent 1,385,102 against the Sanitary Refrigerator Company of Fond du Lac, Wisconsin. The Dent Hardware Company undertook the defense of the suit; paid the bills, hired counsel and directed the furtherance of the appeal to the Court of Appeals in the Seventh Circuit."

In the next paragraph under "Defendant's Evidence" Harry C. Dent states that he is the Vice-President of the Dent Hardware Company, connected therewith about sixteen years as assistant sales manager

and also is in intimate touch with the manufacturing end.

The judgment that was rendered by the Seventh Circuit Court of Appeals on February 9th, 1928, rehearing denied March 6, 1928, 24 Fed. (2d) 15, finally and conclusively determined the questions of validity and infringement of claims 1, 2, 3, 4 and 7 of patent No. 1,385,102 as against the Sanitary Refrigerator Company and its privy, Dent Hardware Company.

The only disputable question, it would seem, relates to the matter of whether or not the decision and judgment of the Court of Appeals for the Seventh Circuit was "final" with respect to the questions of validity and infringement. The appeal to the Court of Appeals for the Seventh Circuit Court of Appeals was an interlocutory appeal as the accounting had not been determined. The Court of Appeals for the Seventh Circuit, however, had to pass upon the questions of validity and infringement of the claims of the patent and it is submitted that, notwithstanding the appeal was an interlocutory one, the judgment and order that was entered was final and conclusive respecting the questions of validity and infringement of the patent.

In support of this position reference is made to the Supreme Court case, Smith vs. Vulcan Iron Wks, *supra*. Before the time of this case nearly all of the Circuit Courts of Appeal had held that in a patent case, where an interlocutory appeal was had to consider validity and infringement questions, and not the accounting, the decision of the Court of Appeals, whether for or against the patent, is final and conclusive as to its validity and infringement. The Supreme Court in said case of Smith vs. Vulcan Iron Works on p. 812, 41 L. Ed., referred specifically to a case of the Sixth Circuit

Court of Appeals, namely, Bissell Carpet Sweeper Co. vs. Goshen Sweeper Company, *supra*, wherein Judge Lurton, later a Justice of the Supreme Court, with the concurrence of Judge Taft, now Chief Justice of the Supreme Court, and Judge Hammond, reversed an earlier decision which held to the contrary, bringing the practice into conformity with the other Courts of Appeal and establishing, that in a case of this kind, although the appeal is interlocutory, the questions of validity and infringement which are decided are finally and conclusively decided and are not subject thereafter to reconsideration and change.

In the Bissell Carpet Sweeper Case, on page 552 of Vol. 72, Fed. Rep., the Court of Appeals for the Sixth Circuit said:

> "It seems to us that the opinions and decrees of this, as a court of appellate jurisdiction, are final and conclusive upon every point actually decided, and that it is the clear duty of the lower court to give effect to the decree without modification or enlargement, in the very terms of the decree here rendered."

In the same case, on p. 548, 72 Fed., a reference was made to the Supreme Court case of Sanford Fork & Tool Co., 16 Sup. Ct. Rep. 291, wherein the Supreme Court said:

> "When a case has once been decided by this Court on appeal and remanded to the Circuit Court, whatever was done before this court, and disposed of by its decree, is considered as finally settled. The Circuit Court is bound by the decree as the law of the case, and must carry it into execution, according to the mandate."

The Supreme Court, in what is believed to be its latest pronouncement upon the matter of *res judicata* concerning a patent case, in Hart Steel Co. vs. Railroad Supply Co., *supra*, on p. 1153 of 61 L. Ed. stated as follows:

> "The doctrine of res judicata is not a mere matter of practice or procedure inherited from a more technical time than ours. It is a rule of fundamental and substantial justice, 'of public policy and private peace,' which should be cordially regarded and enforced by the courts to the end that rights once established by a court of competent jurisdiction shall be recognized by those who are bound by it in every way, wherever the judgment is entitled to respect."

It is not contended in any manner that the judgment and order entered by the Seventh Circuit Court of Appeals on the 9th day of February, 1928, Sanitary R., 141 and 142) was a final disposition of all the issues of the Sanitary suit, inasmuch as an accounting was still pending. But it was a final order and judgment with respect to the questions of validity and infringement involved in the case, binding upon the Sanitary Refrigerator Company and its privy, Dent Hardware Company; and as such was conclusive upon the Sanitary Refrigerator Company and/or Dent Hardware Company in any later matter involving the same questions of validity and infringement. In other words, it is submitted, that following the pronouncement of the Supreme Court in Hart Steel Co. vs. Railroad Supply Co., *supra*, the doctrine of *res judicata* or estoppel by prior judgment, was not to be looked upon in any harsh or technical manner, but was to be cordially regarded and, therefore, it should not await a final

decree disposing of all of the issues in a suit but any decree, whether called interlocutory or final, which did finally and conclusively dispose of the issues with respect to which *res adjudicata* is asked, was sufficient for an application of the doctrine *res judicata* or estoppel by judgment.

Two, at least, of the Circuit Courts of Appeals have so regarded the matter. The Seventh Circuit Court of Appeals in Larkin Automotive Parts Co. vs. Bassick Mfg. Co., *supra*, on pages 944 and 945 of 19 Fed. (2d) after referring to the Supreme Court case of Hart Steel vs. Railroad Supply Co., said:

> "Final, as used by the courts when dealing with the subject of res adjudicata, is not to be determined, by adjective terms. If the decree, in fact, finally determines the issues presented by the pleadings and settles the controversies of the subject matter involved, it is sufficiently final to determine other litigation between the same parties, respecting the same issues, regardless of the fact that it may be in legal nomenclature termed an interlocutory degree.
>
> "The Larkin Automotive Parts Company cannot further contest the validity of the claims involved in this patent in the Ohio litigation. We conclude, therefore, that for the purposes of applying the doctrine of res adjudicata the decree of the Circuit Court of Appeals (6th C. C. A.) is a final decree so far as it determines the validity and infringement of claims 1, 2, 3 and 6 of Gullborg patent 1,307,744."

Likewise the Circuit Court of Appeals for the Ninth Circuit in Carson Inv. Co. vs. Anaconda Copper Mining Co., *supra*, considered identically the same situation, and on page 655 of 26 Fed. (2d) after referring

to a previous interlocutory decree which was entered the accounting on which was still pending, said:

> "Under the facts stated, at once the question arises whether the decision and decree of this court in the American Smelting & Refining Co. case as to the validity and construction of the patents is res adjudicata, not alone as to the defendants of record to that suit, but is an estoppel as to those in privity with the defendant therein.
>
> "It is very clear that the decree of this court in the American Smelting & Refining case in its essence and substance was final as to the validity of the patents involved, and as to the fact that there had been infringement. The questions of novelty and infringement were the pivotal ones before the court. They were considered and conclusively disposed of by our decree; thence they were finally settled."

The Court of Appeals for the Ninth Circuit in this case held, that the final determination of questions of validity and infringement of a patent in an interlocutory appeal, and one in which after the interlocutory appeal the accounting was still pending, was nevertheless a final determination of the questions of validity and infringement which would conclude the losing party, or those in privity with it, from raising the questions of validity and infringement in another case by the same plaintiff, basing it on the rule of law that, there being no further review before the Circuit Court of Appeals of these questions after once determined, any subsequent review being only of proceedings subsequent to the interlocutory decree, the judgment and order of the Circuit Court of Appeals respecting validity and infringement of a patent was as final and

conclusive as it ever would be, and fully as final and conclusive as it would be when a final decree was entered disposing of all the issues of a patent case, including the accounting.

It is submitted that any contention that, in a patent case, a final decree disposing of all issues in the case must first be entered before *res judicata* will apply, and which was so decided by Judge Ray in Australian Knitting Co. vs. Gormly, 138 Fed. 92, is erroneous as based upon a supertechnical ground and one which is contrary to the spirit of the Hart Steel Co. case; and since the time of the Hart Steel Co. case, as evidenced by the two cases, one of the Seventh Circuit Court of appeals and the other of the Ninth Circuit Court of Appeals, discussed, regard has been had for substance rather than technicality, and a finding of a Circuit Court of Appeals relative to the questions of validity and infringement on a interlocutory appeal have been considered final and conclusive respecting those questions, inasmuch as they are not thereafter subject to review on any later appeal which involves the accounting.

It is, therefore, contended on behalf of Winters and Crampton, that the judgment rendered and entered by the Court of Appeals for the Seventh Circuit on February 9, 1928, of which the Third Circuit Court of Appeals had immediate information, which it knew of and recognized and expressly discussed in the opinion handed down by it (Dent R., 208 *et seq.*), should have been held by the Third Circuit Court of Appeals as conclusive against the Dent Hardware Company because of the final and and conclusive determination of exactly the same questions by the earlier judgment of the Court of Appeals for the Seventh Circuit. It is submitted that this prior judgment, though entered

after an interlocutory degree, is as final and conclusive respecting the questions involved as though it was a judgment entered at the eventual determination of the entire case. The questions of validity and infringement of patent 1.385,102 were questions directly put in issue and directly determined by the Court of Appeals for the Seventh Circuit which had jurisdiction thereof. They were finally and conclusively determined by the Court of Appeals for the Seventh Circuit and it is submitted that these findings, "cannot be disputed in a subsequent suit by the parties or their privies."

This last quotation is from the Southern Pacific Railroad Company vs. United States, *supra*. In this case on page 377 of 42 L. Ed. the Supreme Court said:

> "The general principle announced in numerous cases is that a right, question, or fact distinctly put in issue and directly determined by a court of competent jurisdiction, as a ground of recovery, cannot be disputed in a subsequent suit between the same parties or their privies; and even if the second suit is for a different cause of action, the right, question, or fact once so determined must, as between the same parties or their privies, be taken as conclusively established, so long as the judgment in the first suit remains unmodified."

The finality of the decision and judgment of the Circuit Court of Appeals in a patent case as to the questions of validity and infringement directly put in issue before it on an interlocutory appeal from a District Court of the United States is conclusively settled in the case of Smith vs. Vulcan Iron Wks., *supra*, the judgment of the Circuit Court of Appeals, following such

interlocutory appeal, on the questions of validity and infringement of the patent being final and conclusive and thereafter unassailable before such court or any subordinate court. There is no ground, either in law or equity, for making the effect of such final and conclusive judgment await until some unrelated question, such as damages or profits in a subsequent accounting, is determined. The only basis for such a ground would be a technical stand that a final decree in the entire patent suit must be entered before *res judicata* as to the questions of validity and infringement conclusively and finally settled earlier can apply. The Supreme Court in the Hart Steel Company case, it is submitted, has ruled that the doctrine of *res judicata* should not be hampered by any such technical considerations but should be cordially regarded and enforced. The Seventh and Ninth Circuit Courts of Appeals have construed this pronouncement of the Supreme Court to mean that in a situation like the present one, the judgment of a Circuit Court of Appeals on an interlocutory decree with respect to the questions of validity and infringement of a patent is final as to such questions, and is a proper basis for concluding and estopping the losing party or its privies from questioning such conclusion at a later time. Therefore, it is submitted, that in the present case the final and conclusive judgment, though handed down on an interlocutory appeal, rendered and entered by the Circuit Court of Appeals for the Seventh Circuit on February 9, 1928, of which the Court of Appeals for the Third Circuit had knowledge long before October 4th, 1928, when it handed down its opinion, was conclusive as to validity and infringement when urged against the Dent Hardware Company, the party who sold the

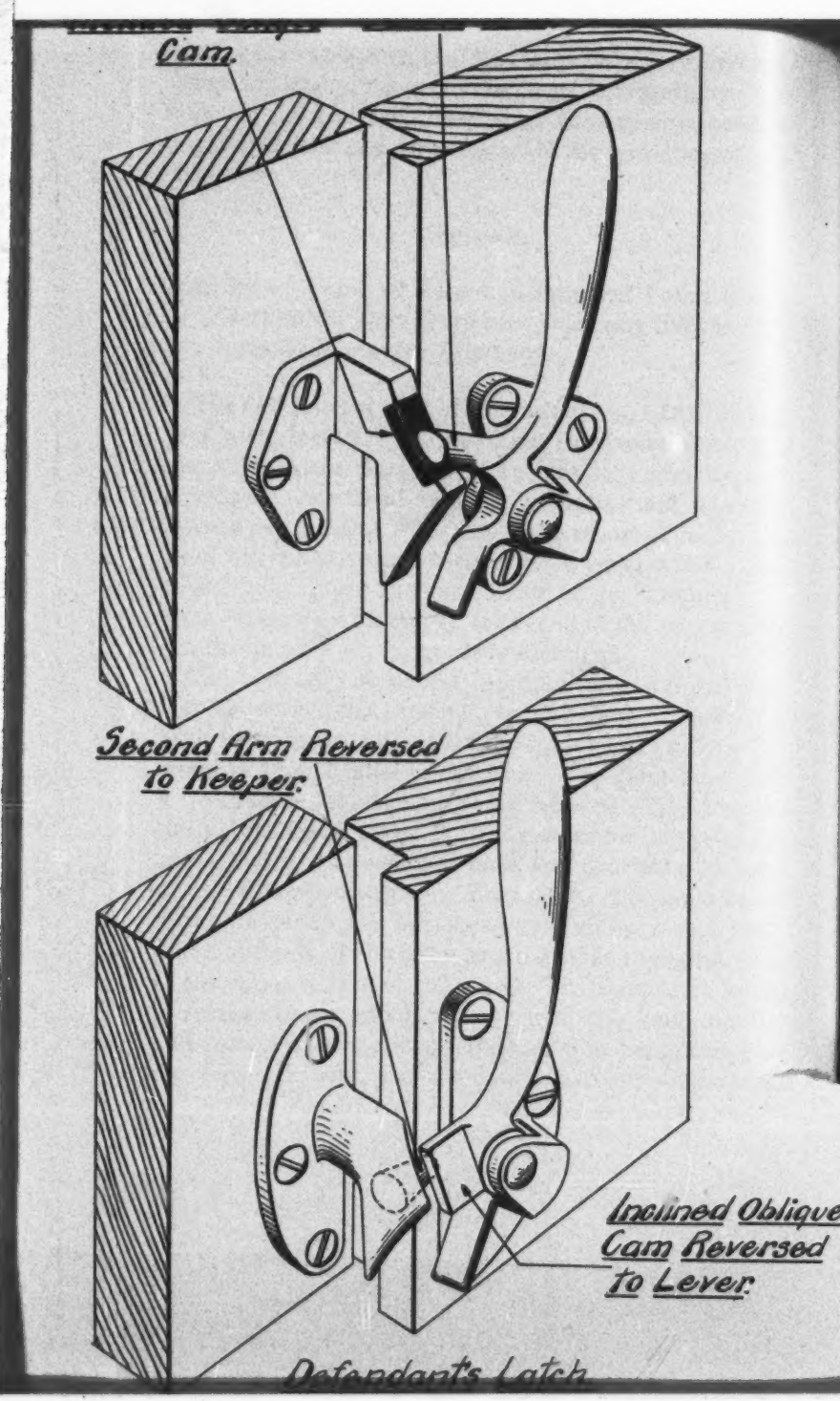
infringing latches to the Sanitary Refrigerator Company and was privy to the Sanitary Refrigerator Company in the first suit, bearing all the expense, employing the counsel and directing all of the activities of said first suit.

Point B.

Identity of Latch of Patent in Suit and Latch Manufactured by Dent Hardware Company Sold to Sanitary Refrigerator Company.

The two latches, that of the patent No. 1,385,102 and that manufactured by the Dent Hardware Company and sold to the Sanitary Refrigerator Company, are physically indentical in most respects, and where a change in physical form has been resorted to by the Dent Company it has been a mere reversal of parts without change in function, mode of operation, or results attained, whereby, in the sense of the patent law, the two latches are completely identical.

The latch of the patent in suit uses a fixture, previously described, attached to the door including a base, an outwardly extending post and a laterally overhanging arm parallel to the base. The Dent latch has a like fixture identical in every respect. The latch of the patent has a lever pivotally mounted between its ends located between said base and overhanging arm of said fixture. So has the Dent latch. The latch lever of the patent in suit is formed with an operating handle at one side of the pivot and a keeper engaging arm at the opposite side of the pivot. The Dent latch lever is formed in the same manner with the same handle and with the same oppositely extending keeper engaging arm. In both, the lever swings freely through a


Cam.
Second Arm Reversed to Keeper.
Inclined Oblique Cam Reversed to Lever.
Defendant's Latch

90° arc in a plane parallel to the front of the door. Both are stopped when the handle portion of the lever engages against the upper side of the post of the door fixture holding the lever horizontal. Both are stopped in a vertical position by the keeper engaging arm striking against the opposite side of the post of said fixture.

The keepers in the patent in suit and in the Dent latch each have a base, an outwardly extending post and a substantially triangular shaped depending head forming a hook for the keeper engaging arm. The lower outer edge of the keeper head in both is a curved cam against which the keeper engaging arm of the keeper strikes when the door is moved to a closed position with the lever horizontal. The physical identity so far is exact and unchanged in any respect.

The latch lever of the patent in suit has a second arm projecting laterally therefrom and the keeper has a cam to co-operate therewith at the upper outer edge of the keeper head. In the Dent latch, a pin projects laterally from the side of the head toward the latch lever and an inclined cam to cooperate therewith projects laterally from the side of the lever.

There has been a transfer and reversal of the second arm of the lever of the patent in suit to the keeper and a transfer and reversal of the inclined cam cooperating therewith from the keeper to the lever, in the Dent latch.

The accompanying drawing has been made to illustrate what has just been described. The latch of the patent in suit appears at the upper part under the heading, "Plaintiffs' Latch." In the plaintiffs' latch, a second arm is noted projecting laterally from the latch lever and the inclined cam at the upper outer edge of the head of the keeper is shown in solid black.

In defendant's latch, shown in the lower part of the drawing, the inclined cam has been reversed or transferred to the lever, and the second arm has been reversed or transposed to the keeper.

This, it is submitted, is the merest alteration and reversal of parts that can be done and when attempted it is to be held an infringement under the principles of Union Paper Bag Co. vs. Merrick Murphy, *supra*. The patent in the Union Paper Bag Co. case was concerned with a paper bag making machine. Paper bag making machines were very old, or as the decision of the Supreme Court therein says, on page 935 of 24 L. Ed.:

> "Machines for making paper bags are old, as both sides admit; and the evidence in this case shows that they have been constructed by many persons and in various forms for more than twenty years, and with more or less utility. Neither party, in this case, claims to be the original and first inventor of an entire machine of the kind; nor could such a claim, if made, be sustained, in view of the admitted state of the art."

The matter in issue in the Union Paper Bag Machine Co. case related to the mechanism for cutting the paper. In the patent the cutter was movable, was lifted vertically and descended by its own weight. The paper passed over a stationary striker and when the cutter dropped by its weight the paper was cut. In the charged infringed machine a knife identical in shape with that of the patent was stationary over which the paper passed, and a weight in the form of a bar of metal was lifted and then thrown down sharply upon the paper, causing the knife to cut the paper as effectively as did the cutter in the machine of the patent.

That is, a knife and a striker were used in both machines. In the patent the striker was stationary, the paper passed over it and the knife dropped against the striker with the paper between. In the infringing machine the knife was stationary, the paper passed over it and the striker came against the knife with the paper between, a reversal in position and movement of the knife and striker but with an attainment of like results in both cases. There was relative movement of the knife and striker in both instances, though in one case, that of the patent, the striker was stationary and the knife movable, while in the infringing machine the knife was stationary and the striker movable. The Supreme Court found that these two machines were identical in the sense of the patent law, holding, on page 936 of 24 L. Ed. that:

> "Except where form is of the essence of the invention, it has but little weight in the decision of such an issue, the correct rule being that, in determining the question of infringement, the court or jury as the case may be, are not to judge about similarities or differences by the names of things, but are to look at the machines or their several devices or elements in the light of what they do, or what office or function they perform, and how they perform it, and to find that one thing is substantially the same as another, if it performs substantially the same function in substantially the same way to obtain the same result; * * *."

From the strictly physical standpoint in the present case, in patent No. 1,385,102, the second arm (marked 12, Dent R., 104, 106) is on the lever and moves with it. The cooperating inclined or oblique cam 18 is on the keeper head and stationary. In the Dent latch the sec-

ond arm is on the keeper head and is stationary, as shown by the pin b8 in the drawing of the Schrader patent 1,575,647 (Dent R., 146, Fig. 3). The cooperating came c1 is on the lever and movable with it. The pin b8 and the cam c1 on the latch lever work together, cooperating together, serve exactly the same functions, no more and no less than the arm 12 and the cam portion 18 of the structure of the patent in suit shown Dent R., 104, 106. There has been the same kind of alteration in form of the latch of the patent in suit by the Dent company in this case as was done by the infringer in the Union Paper Bag Machine Company case; and in the sense of the patent law they are the same thing, doing the same work in the same way and accomplishing the same results, no more and no less.

The cooperation of the second arm 12 on the lever of the patent in suit (Dent R., 106) and the upper outer cam portion 18 of the keeper head takes place in opening the door and also in closing the door. In opening the door the inner side of such second arm rides on the outer surface of the cam 18, prying the door open if for any reason it is tight or sticks, as many times happens with refrigerators due to swelling because of moisture. This action occurs on swinging the latch lever upwardly about its pivot in a counter clockwise direction to bring the arm 12 and cam 18 against each other . With the Dent latch the inner side of the inclined oblique cam c1 which has been transferred to the lever (Dent R., 146), on a like movement of the lever in a counter clockwise direction, rides against the outer side of the pin b8 on the keeper head, causing the door to be opened even though it should stick, by reason of the cooperating cam action by the cam c1 on the lever and the lug or pin b8 on the keeper in exactly

the same way and with exactly the same pivotal movement imparted to the lever.

In closing the door with the latch structure of the patent in suit, if the lever is in vertical position, the inner side of the second arm strikes and rides against the cam edge 18 of the keeper head with an automatic turning of the lever in a clockwise direction into engagement with the keeper hook. With the Dent latch under such circumstances, the inner side of the inclined oblique cam c1 rides against the upper outer side of the pin b8 with a like automatic clockwise turning movement of the lever into engagement with the hook of the keeper.

If the latch lever in the patent in suit is horizontally positioned when the door is closed the keeper engaging arm rides against the under outer cam edge 19 of the keeper head, turning the lever upwardly about its pivot until the second arm 12 strikes against the upper cam edge 19 of the keeper, causing a reversal of movement of the lever, following which it swings the first or the keeper engaging arm into automatic wedging engagement with the inner side of the keeper head. With the Dent latch if the lever is horizontally positioned on closing the door, the first or keeper engaging arm c7 rides against the lower cam edge b5 of the keeper head swinging the lever upwardly until the inclined cam c1 strikes the pin b8, whereupon the lever is reversed in its movement and moved rapidly in a clockwise direction, and the first or keeper engaging arm wedges against the inner side b4 of the keeper head.

There is identity in operation in every respect caused by identical engagements of like parts in the two latches in every movement that the latch lever

makes, either in opening or closing the door. There has been no change in function, there has been no new combination made by this mere reversal and transposition of one stationary and one movable part, which in their reversed positions cooperate in the same way and have the same relative movements with respect to each other. This is a kind of change in the relative positions of the parts of a machine meant in the first sentence of the first paragraph of section 348 of Walker on Patents, Fifth Edition, page 432, where the change in relative position in no way effects the respective functions of the parts which have been changed, or as said by Walker:

> "Change in the relative position of the parts of a machine or manufacture does not avert infringement, where the parts transposed perform the same respective functions after the change as before."

It is not a change like that referred in the second paragraph of section 348 of Walker, where the change has so changed the functions of the parts that the machine is a new machine with a substantially different mode of operation.

The Dent latch presents no new change in function or mode of operation and the only thing that can be said, which was urged before both the Third and Seventh Circuit Courts of Appeals, namely, that the location of the inclined oblique cam on the latch used by the petitioner is closer to the pivot of the lever than is the second arm of the latch of the patent, while the lug or reversed second arm on the keeper head is located inward from the outer upper edge of said head, thereby making a closer coupling of the two cooperat-

ing parts (the second arm and the inclined arms), works only a slight change in the leverage, making only a slight difference in the degree of force which may be secured in opening a door that sticks, though the way that the door is pried open remains exactly the same.

This exact equivalence and, therefore, identity in the sense of the patent law is set forth first in this brief for the reason that it may obviate the necessity for any further consideration of the case. The claims 1, 2, 3, 4 and 7 are valid. Both trial courts and appeal courts have found them so. If there is this complete identity in the sense of the patent law as set forth by the Supreme Court case cited, it is immaterial whether the construction of the claims be broad, narrow or otherwise, for no matter how narrow a construction or interpretation be given, complete identity of a charged infringing structure with the patented structure in the sense of the patent law necessarily proves infringement of even the narrowest claim that a patent may have, or of any claim under the narrowest construction and interpretation that is given to it. One of the lower courts, that of the Southern District of New York, in Anchor Cap & Closure Corp. vs. Prichard, *supra*, by Judge Learned Hand, now judge of the Circuit Court of Appeals for the Second District, on page 160 of 232 Fed. in treating patent No. 874,201, discussed the structure of the defendant's machine therein, called attention to the reversal of parts of the machine of the patent in suit, called attention to the prior art, and concluded:

> "It is quite possible that the scope of the patent must be held strictly to the disclosure itself; but that question is academic here for the defendant has copied the machine faithfully ex-

cept for the *mere reversal of the parts.*" (Italics ours.)

In Crown Cork & Seal Co. vs. Aluminum Stopper Co., *supra,* on page 866 of 108 Fed., the Circuit Court of Appeals for the Fourth Circuit said:

> "The court will look through the disguises, however ingenious, to see whether the inventive idea of the patentee has been appropriated, and whether the defendant's device contains the material features of the patent in suit, and will declare infringement even when those features have been supplemented and modified to such an extent that the defendant may be entitled to a patent for the improvement." Citing Clough vs. Gilbert & Barker Mfg. Co., 106 U. S. 164, 27 L. Ed. 134; and same, 106 U. S. 178, 27 L. Ed. 138.)

Section 348, p. 432, Walker on Patents, 5th Ed., says:

> "Changing the relative positions of the parts of a machine or manufacture does not avert infringement, where the parts transposed perform the same respective functions after the change as before." (Citing ten supporting cases.)

In Columbia Wire Co. vs. Kokomo Steel & Wire Co., 143 Fed., on page 122, the Court of Appeals for the Seventh Circuit said:

> "We are of the opinion that the means thus transposed in the appellee's machine, if not within the definition of colorable evasion which infringe the patent in any view of its scope, are plain appropriations of the essence of the Bates conception by equivalent means, and infringe-

ments of the patents within the well settled rule referred to. All the elements of the patent combination are employed with substantial identity in their use, and departure appears from the letter of the claims only in the arrangement of these elements, without substantial difference in the principle of operation. The policy and rules of the Patent Law require that the patentee be protected against such evasion of a wording of the claim in form or non-essential details when the substance of the invention is thus used and is unmistakably shown in the specification and claims." (Citing six supporting cases of the Supreme Court and one by a Circuit Court of Appeals.)

In Walker vs. Giles, et al., 218 Fed., on page 638, the Court of Appeals for the Second Circuit said:

> "The only change of organizations which defendant has made is the placing of the flange, which acts to hold the hub in place, on the gear rack instead of on the hub. In one case the flange rests on the teeth of the gear rack; in the other the teeth of the hub rest on the flange. This is a mere reversal of parts, and under well settled principles will not avoid infringement."

In Simplex Window Co. vs. Hauser Reversible Window Co., 248 Fed., on page 926, the Circuit Court of Appeals for the Ninth Circuit said:

> "It is apparent, from a comparison of the two devices, that they both produce the same result. The real question is: Do they do so by substantially the same means? It is needless to cite the numerous cases in support of the law clearly stated in section 348, Walker on Patents, the substance of which is that changing the relative

> position of the parts of a machine does not avert infringement, where the parts transformed perform the same respective functions after the change as before, but that such change does do so where the changing of those positions so changes the functions of the parts that the machine acquires a substantially different mode of operation, even though the ultimate result remains the same."

In Telescope Cot & Bed Co. vs. Gold Medal Camp Furniture Mfg. Co., 229 Fed., the Court of Appeals for the Second Circuit, on page 1004, said:

> "Infringement seems too clear for discussion. In the Herman cot the slots are in the braces and the pins are on the brackets connected to the legs. In defendant's cot the slots are in the brackets and the pins are on the braces. It is wholly immaterial on which parts of the combination the slots and pins are respectively located so long as they function alike in both structures; this they do because defendant's slots in the brackets are so located that the play of the pins therein is in the same direction as the length of the braces. The amount of this longitudinal play is slightly less in defendant's structure because the slots are somewhat shorter, but they are long enough to secure a substantial longitudinal play. Infringement may be found although the infringing device does not obtain the advantages of the invention to the fullest extent."

In Pittsburgh Water Heater Co. vs. Beler Water Heater Co., 228 Fed., the Court of Appeals for the Third Circuit, on page 677, said:

> "That mere departure or reversal in order and form, while identity or principle, process

> or result are retained, will not serve to avoid infringement, is a fundamental principle of patent law that needs no supporting citations."

In Devlin vs. Paynter, et al., 64 Fed. 398 (3rd C. C. A.), the Second Syllabus says:

> "A union for steam pipes, consisting of a head member having a seat of soft metal with a concave face, and a tail member having a convex face, is infringed by a union which differs only in the facts that the convex face is on the head member and the concave face is on the tail member, and that the soft metal is on the convex face instead of on the concave face."

The various cases cited of the Circuit Courts of Appeals are decisions of courts of final resort in patent matters and beyond which, as soon as the establishment of Circuit Court of Appeals took place, a patent case seldom went. Changes in relative position of parts, without departure from the invention and the principle of operation thereof, which do not break up the combination and make a new combination with a greater or less number of elements in the combination than are defined in the claims of a patent which is charged infringed, and particularly where there is a mere reversal of two cooperating parts in a combination structure, does not avoid infringement and has been universally so held by all courts of last resort. The principle of law is stated by the Third Circuit Court of Appeals as so well settled as to require no supporting citation.

Most rearrangements and reorganizations of elements which make a new invention, in fact, it is believed all of such reorganizations and rearrangements

which really make a new combination are reorganizations and rearrangements which go far beyond merely reversing two cooperating parts, one of which is stationary in the device of the patent and the other of which is movable, while in the charged infringing device the previous stationary part has been made movable and the previous movable part stationary. Mere reversal, of this kind, has always been, it is submitted, considered identity in the sense of the patent law irrespective of how strict a construction is given to the claims of a patent. For the question of the breadth of scope of the patent become merely academic, as Judge Hand has said, where there has been a faithful copying of the patented mechanism except for such mere reversal; because, in fact, in such cases, in the sense of the patent law, there is absolute and complete identity which will bring the infringing article within the scope of any valid claim of the patent whatever its construction may be.

Point C.

Patent No. 1,385,102 Meritorious and Entitled to Liberal Treatment.

The automatic swinging lever latch structure disclosed in patent No. 1,385,102 in suit is one of merit, as evidenced by its immediate wide acceptance, large sales to refrigerator manufacturers and its supplanting and superseding other pivoted springless latches previously used on refrigerators, making the same practically obsolete. Mr. Crampton, one of the inventors (Dent R., 35, 36; Sanitary R., 10), stated that the latch was sold to a great number of refrigerator companies and that 90 per cent of the commercial refrigerators, that, is, large refrigerators used in butcher

shops, grocery stores and the like, had this type of latch and were using it. Approximately 400,000 of the latches were sold in the preceding year. Plaintiffs' Exhibit H (Dent R., 117) is a compilation of latches made in accordance with this patent in suit from the time it was marketed in 1921 to and including 1926, there being a total of over 2,000,000 of the latches of this character sold.

The latch is particularly useful in its larger sizes on commercial refrigerators, but is also sold to household refrigerator companies.

Where a construction, like the latch of the patent in suit, coming into a very crowded art and one in which latches for refrigerators have been used for many years, is immediately accepted, sold in large quantities and must have taken the places of the latches previously used on the 90 per cent of the commercial refrigerators, supplanting and superseding them and rendering the latches formerly used for years practically obsolete, it is very weighty evidence of an invention of exceptional merit; and it is submitted is one which is entitled to a liberal treatment and the claims entitled to a construction which will, if possible, give effect to the patent rather than desroy it. The patent does not have to be a pioneer, nor one making a long step in advance in an art, in order to be entitled to liberal treatment, if, in fact, the invention which has been made is meritorious.

The Supreme Court has recently so stated in Eibel Process Co. vs. Minnesota & Ontario Paper Co., *supra,* as follows, on p. 328, 43 Supt. Ct. Rep.:

> "In administering the patent law, the court first looks into the art, to find what the real merit of the alleged discovery or invention is,

and whether it has advanced the art substantially. If it has done so, then the court is liberal in its construction of the patent, to secure to the inventor the reward he deserves. If what he has done works only a slight step forward, and that which he says is a discovery is on the border line between mere mechanical change and real invention, then his patent, if sustained, will be given a narrow scope, and infringement will be found only in approximate copies of the new device. It is this differing attitude of the courts toward genuine discoveries and slight improvements that reconciles the sometimes apparently conflicting instances of construing specifications and the finding of equivalents in alleged infringements. In the case before us, for the reasons we have already reviewed, we think that Eibel made a very useful discovery, which has substantially advanced the art. His was not a pioneer patent, creating a new art; but a patent which is only an improvement on an old machine may be very meritorious, and entitled to liberal treatment. Indeed, when one notes the crude working of machines of famous pioneer inventions and discoveries, and compares them with the modern machines and processes exemplifying the principle of the pioneer discovery, one hesitates in the division of credit between the original inventor and the improvers, and certainly finds no reason to withhold from the really meritorious improver, the application of the rule 'ut res magis valeat quam pereat,' which has been sustained in so many cases in this court. Winans vs. Denmead, 15 How. 338, 341, 14 L. Ed. 777; Corning vs. Burden, 15 How. 265, 269, 14 L. Ed. 683; Turrill vs. Railroad Co., 1 Wall. 491, 510, 17 L. Ed. 668; Rubber Co. vs. Goodyear, 9 Wall. 788, 795, 19 L. Ed. 566; McClain vs. Ortmayer, 141 U. S. 419, 425, 12 Sup. Ct. 76, 35 L. Ed. 800."

The Supreme Court very recently, in Temco Electric Motor Co. vs. Apco Mfg. Co., *supra*, dealing with a patent which was not a pioneer, was affected in its decision by the way in which the public eagerly took to the device of the patent involved and its marked success. On page 172 of 48 Sup. Ct. Rep. it is said:

> "The District Judge in Ohio. in the K-W Ignition case was affected in his decision, that the Thompson patent involved invention, by the way in which the public eagerly took it and its marked success, and so, indeed, was the Circuit Court of Appeals for the Sixth Circuit. So are we."

Where, as in the present case, an invention is of the kind which obsoletes other structures which have been practically used for many years and which previously have been the best of their kind, it is submitted it is entitled to every consideration because of the weighty evidence showing that it is a real and marked advance, and a valid invention and that it is entitled to as liberal a treatment as many first inventions in a field.

In the present case Winters and Crampton made practically obsolete the so-called Condit lever, previously described in the first paragraph (Dent R., 107) of the patent in suit. The Condit latch of the swinging lever type, on the market when the Winters and Crampton latch was produced, is before the Court in the so-called Defendant's Exhibit 1914 Latch, made in accordance with the Schrader patent (Dent R., 128) No. 1,114,296. Such type of Condit latch is open for all latch manufacturers to make. As before stated, its principal objection, and which the latch made by Winters and Crampton overcame, is that when it drops to

horizontal position with the door open it extends partly across the door opening.

If Winters and Crampton had made no meritorious advance, there would be no necessity of infringement with the many other old latches available and free for use. It is submitted that it does not come with very good grace from any infringer to claim there has been either no advance or at least one of infinitesimal character, that the latch of the patent is no better than those previously used, yet at the same time cling stubbornly to the new patented latch and not use the old. The Court of Appeals for the Eighth Circuit in Griswold vs. Harker, 62 Fed. 389, on page 393, has commented upon such circumstances as follows:

> "Actions often speak louder, and frequently more truthfully, than words. It is not impossible that the reason why the appellees are not using the old devices they plead is that the improvements described in this patent have made them useless and unmerchantable. If this is not so, they can abandon the improvements of Seldon and Griswold, and go back to the devices they plead."

Likewise in the present case the various prior art patents, which will be more specifically considered under the next point of argument, are available for the Dent Hardware Company to manufacture and sell, may be resorted to without fear of infringement and if they are as good and work upon substantially the same principle to obtain the same results as well as the latch structure invented by Winters and Crampton, the Dent Hardware Company has them available for use without question by anyone.

Point D.

Claims 1, 2, 3, 4 and 7 of Patent 1,385,102 Define the Invention Completely and Prior Art Patents Do Not Anticipate or Destructively Limit the Invention Thus Defined.

A reference to the claims of the patent in suit, and which are printed in the Dent Record 108 and 109, shows that claims 1 and 2 are claims of the least breadth and define the invention the most specifically. The keeper is defined specifically. The fixture or member on which the lever is mounted is defined specifically in its three elements, "a base, an integral outstanding post projecting from the base and a laterally extending arm at the upper end of the post paralleling the base." The latch lever in its specific form is defined.

Even in this specific form, as defined in these two claims, it is submitted there is infringement for the reason that, while the latch made by the Dent Company has some variations in structure from that illustrated in the patent, such variations arise by reason of mere reversing or transposing two of the parts, one on the keeper and one on the lever, to the lever and keeper, respectively; and these parts when transposed or reversed retain exactly the same mode of operation and cooperate exactly the same way as they do in the specific form of latch structure illustrated in the Winters and Crampton patent drawings. There is physical and literal identity other than this mere transposition or reversal, and the identity with the patented structure, as defined by claims 1 and 2, of the charged infringing structure is present in the sense of the patent law.

The next most specific claim is claim 7. The keeper is defined as attached to the casing. The latch lever is defined as pivotally mounted on the door between its ends. One end of the lever is to be formed into an operating handle and the other into a keeper engaging arm. A second arm projects from the handle portion of the lever a short distance from the pivot at an angle to the first arm. A keeper is defined as formed at its outer sides for engagement with the respective arms when the lever is in horizontal and vertical positions, respectively, as the door is closed. This automatically operates the lever so that it will engage under the keeper when the door is closed no matter what the position of the lever.

This claim, as well as claims 1 and 2 previously noted, has the invention of the patent in suit and the same invention is present in the Dent latch. The Dent latch may be considered in either of two ways. The first, that the inclined oblique cam at the upper part of the keeper head has been transferred to the lever and the second arm of the lever transferred to the keeper head as before stated, which being a mere reversal disturbs in no way the cooperative action of the parts, or, second, the inclined oblique member on the lever of the Dent latch may be considered the second arm and the lug which projects from the keeper considered a part of the keeper, as the Seventh Circuit Court of Appeals did in its consideration of the matter. This appears from the opinion of the Seventh Circuit Court of Appeals (Sanitary R., 140, 141). The Court of Appeals for the Seventh Circuit (Sanitary R., 141) considered that the Dent lever had two arms, one, the first arm, to engage with the keeper when the door was closed, and to [illegible]age with the under curved cam at the outer side of [illegible]eeper head if the lever was horizon-

tal when the door was being closed; and a second arm, the inclined oblique member projecting laterally from the lever at the handle side of the pivot to engage with the lug on the keeper head, if the lever was in vertical position as the door was being closed, said lug being on and a part of the keeper head.

With the way that the Seventh Circuit Court of Appeals treated the Dent latch there is a literal correspondence of the terms of claim 7 to the Dent latch structure. The same is also true with respect to claim 1. And the only difference in literalism with respect to claim 2 is that in the first part of the claim the keeper is defined as including, "an outer head spaced from the casing and formed with upper and lower curved sides coming substantially to a point," and in the latter part of the claim, beginning with line 119 (Dent R., 8), "a second arm projecting from the handle portion at an angle to the first arm and adapted to ride against the upper outer side of the keeper * * *."

But even with respect to this part of claim 2, it is to be understood that in the Dent latch structure, that part of the keeper outwardly and beyond the upper side of the lug projecting from the keeper is surplusage and useless from a functional standpoint, as admitted by the Expert Witness for Dent (Dent R., 7, X-Q. 50 and answer) as follows:

> "X-Q. 50. In other words, that part of the fendant's keeper, above the lug, so far as function is concerned, is surplusage?
>
> A. That part of defendant's keeper which is above the lug, in the defendant's keeper, physical exhibit, is entirely unnecessary, and is, itself, merely ornamentation, and the same remarks apply in general to the drawings of the defendant's patent."

Therefore, the upper outer side of the lug being the upper outer side of the keeper when the unnecessary ornamental part is removed, there is literal correspondence to the terms of claim 2 on the theory that the lug is a part of the keeper head projected toward the lever because the second arm has been shortened somewhat, and the inclined oblique member projected laterally from the keeper is the second arm defined in the claims.

Whichever way of treating the matter is adopted there is infringement; direct literal correspondence to the terms of the claims 1, 2 and 7, and as will hereafter appear, 3 and 4 also, or identity in the sense of the patent law on the basis of a mere reversal of two parts of a combination structure, which reversal in no way disturbs or changes their cooperative action to obtain the results desired, which results are obtained by the same mode and principle of operation.

In the same way, with respect to claim 4 there is complete and direct appropriation of the invention defined therein. This claim defines a keeper attached to a casing, a latch lever pivotally connected to the door to engage with the keeper to hold the door closed, two arms on the latch lever, one of which is engaged with an outer portion of the keeper when the door is moved to closed position to swing the lever from horizontal to vertical position and engage the other arm under the keeper, the other arm being engaged with a different outer portion of the keeper when the door is moved to closed position with the lever horizontal to turn it upward to the vertical position, or until said other arm passes under and engages with the keeper to hold the door closed.

For, in the invention defined in this claim, literally

the Dent latch has the two arms, one in alignment with the handle, the other projecting laterally from the handle, and has a keeper, in which the lug is a part of the keeper head. The two arms engage with different outer sides of the keeper when the latch is in its two positions, one vertical and the other horizontal, to effect the engagement of one of the arms with the keeper when the door is closed. And from the standpoint of identity of the two latch structures, in the sense of the patent law, the reversal of the arm and the inclined cam part which cooperate with each other in plaintiff's patent is identity complete in every respect.

Claim 3 is the broadest of the claims. It defines a keeper attached to the case, a latch lever pivotally connected to the door and engageable with the keeper to hold the door closed, and means on the keeper and means on the latch lever to engage with the keeper on the outer sides thereof to swing the lever into engagement with the keeper at the inner side thereof when the door is closed, with the lever occupying either a horizontal or vertical position.

This claim clearly has no limitation restricting destructively in any manner the invention which was made by Winters and Crampton. This claim as well as claims 4 and 7 clearly does not limit the invention to any word picture of the drawing of the patent in suit. Like most patents which have any scope at all, there are several claims to the invention. The claims 1, 2, 3, 4 and 7 vary considerably in the terms used to define the invention. Claim 3 is of greatest breadth, claims 1 and 2 are the narrowest and claims 4 and 7 occupy an intermediate position. No abandonment by failure to claim the invention is present. There are

not any limitations in the claims which the Dent latch does not have either in the exact way as defined by the claims or in a direct equivalent that does not change the identity in view of the patent law. All of the elements defined in each of the claims 1, 2, 3, 4 and 7 are present in the Dent structure. None are omitted. No change in the cooperation of the elements is made. No change or variation in the principle or mode of operation is made.

The nearest prior art patent in the opinion of the Court of Appeals for the Third Circuit is that to Keil, No. 554,448 (Dent R., 124). It is pertinent to point out that in the progress of the Winters and Crampton patent application through the Patent Office this patent to Keil was cited, not against claims 1, 2, 3, 4 and 7, but against a claim which was drawn to the keeper *per se*. This appears Dent R. 168. Also in the same Office action other patents were cited by the Patent Office, such as Dent, No. 670,506 (Dent R., 120), and Ward, No. 1,250,736 (Dent R., 198).

The other patent which the Court of Appeals for the Third Circuit thought was of considerable weight, as appears from its opinion (Rent R., 212, 213) is that to Charles, No. 702,185 (Dent R., 152, 154). There are, in these several patents, pivoted latch levers, keepers and the like. The Court of Appeals for the Third Circuit says that Keil has the keeper *per se* and Charles has the lever *per se*, very nearly, in that it has two arms, one extending beyond the pivot or fulcrum of the lever, and the other substantially at right angles to it.

The opinion of the Court of Appeals for the Third Circuit is that Keil having the keeper and Charles having much the same lever, even though the second

arm of the Charles lever is on the wrong side of the pivot, and the Keil latch lever being mounted on the door and the Charles latch lever being on the door casing, the Charles lever can be put in place of the Keil lever and then by properly redesigning and changing the positions of the arms of the Charles lever the Winters and Crampton latch is made.

Granting that, after Winters and Crampton have shown how it could be done, this selection of various parts from the prior art may be accomplished and various changes in the Charles latch lever made, such method of attempting anticipation or destructive limitation of the claims of the Winters and Crampton patent is, it is submitted, completely and wholly unfair and unsound. For there is a complete ignoring of the combination entity produced by Winters and Crampton for the first time, as defined in their claims 1, 2, 3, 4 and 7 of the patent in suit, with attention given only to certain parts of the structure of the Winters and Crampton latch after it has been produced, with no thought or conception of organizing these various elements obtained from Keil and from Charles into a workable whole appearing previously in any of the prior patents. If such a method of defeating a patent had been permitted, the Webster patent in the case of Loom Company vs. Higgins, 105 U. S. 580; 26 L. Ed. 1177, would have been declared invalid by the Supreme Court of the United States instead of being held valid and a very valuable patent notwithstanding that all of the parts used in the Webster patent were old devices and well known.

A new combination is not defeated or emasculated by finding its several parts in different prior patents.

This principle, it is submitted, is so well settled as to be almost axiomatic.

With respect to the Keil patent, attention is called to the description of the operation thereof (Dent R., 125). This description begins with line 73, as follows:

> "In operation, when the door is pushed inward the pin 5 rides down the incline 9 of the keeper, as indicated in Fig. 4, and automatically lifts the handle end of the lever and finally assumes about the position shown in Fig. 3. A *downward* and *inward push* on said handle causes the pin 5 to ride up over the cam 10 to the position shown in Fig. 2, and thus firmly clamps the door in its casing. When the door is to be opened an outward pull of the handle first carries the parts back to a position where the pin 4 will engage the lower part of the substantially perpendicular face 9*a*, the pin 5 being at the same time carried down below the cam 10. Further movement in this direction carries the pin 4 up over and to a slight degree along the face 9*a*, and thus forces or 'pries' the door outward from its seat in a direct horizontal plane." (Italics ours.)

There is no thought or conception that this lever shall ever occupy a horizontal position. It is a freely swinging drop handle lever which has to be finally moved to closed position by hand exertion.

Likewise the Dent patent recites its operation (Dent R., 121), beginning with line 71. It is as follows:

> "The operation of the device is simple. When the door is pushed shut, the lever f is depressed to force the lug g into the seat g′ if the wing h′. When now the lever f is still further depressed, the cam f′ of the lever f is forced in-

ward by the weight h' of the keeper and by reason of the slotted connection with the pin or bolt e is permitted to bear directly upon the plate d of the door a. The door will thus be tightly jammed into its seat without strain upon the pivot e of the latch. When the door a is to be opened, the latch f is thrown upward until the lug g strikes upon the wing h2, when the door will be initially pried or forced open by the impingement of the lug g upon the said wing. By pulling upon the lever f the door will then come open easily and without any oblique pressure upon the door while in its seat."

The Charles patent, according to the opinion of the Third Circuit Court of Appeals (Dent R., 213), "has a handle portion which may stand in a horizontal, vertical or intermediate position." The Court of Appeals with respect to the Charles patent on this point is completely wrong. There are no stops of any kind and when the lever is free it hangs downwardly from its pivot, as shown in Fig. 3 (Dent R., 152) or in Fig. 5 (Dent R., 154). The other positions of the lever, shown in Figs. 6 and 7 are different positions of the lever as it is being swung across the meeting edge of the door and the door jamb from the position shown in Fig. 5 to that shown in Fig. 1; and if this lever was supplied with suitable stops to restrain it to a 90° swing between horizontal and vertical it would then be subject to the very objection of the Condit latch which was the primary object of Winters and Crampton to overcome. That is, referring to Fig. 1 of the Charles patent (Dent R., 152), if this lever was limited to swing from its horizontal position there shown through 90° to a vertical position its dropping to horizontal position with the door open would interpose the lever in the path of movement of the door.

It may also be further noted that the two so-called arms *d* and *e* of the Charles patent, neither of them ever have any engagement with the keeper *g* when the door is closed, while in the Winters and Crampton construction of latch the first arm 9, the keeper engaging arm, is to engage with the keeper when the door is closed. It is, therefore, submitted that the Court of Appeals for the Third Circuit erred completely when from such a showing of prior patents it held that the principle of the Winters and Crampton patent had been previously produced; that they were very doubtful about the validity of the claims, and that if valid they covered no more than a latch which was an exact physical reproduction of the specific details of the latch as disclosed in the drawings.

Various levers, cams, pins, arms, keepers of various sorts and the like are found in these different prior patents and prior structures. Such is usually the case in every patent of recent years at the present state of industrial development. But the mere prior production of various elements and the finding of the same in many different patents is not anticipation, nor controlling in determining and construing the claims of a patent to a combination where the combination is itself new for the first time and not anticipated.

The claims 1, 2, 3, 4 and 7 were allowed by the Patent Office as filed, and with the Keil and the Dent and the Ward patents before the Examiner, together with a description of the Condit latch and statement that it was old. The Charles swinging lever patent, in which the lever swings at a plane parallel to the face of the door, is defective because mounted on the door jamb and it is open to the same serious objection as the Condit latch. Changing the Charles lever from the jamb to the door is impossible.

This invention made by Winters and Crampton, it is submitted, was not obvious from all of these prior art patents. The Winters and Crampton patent was a very marked and wide improvement thereover. Upon its production it had to enter the market in competition with these earlier structures. If there was any doubt it should be completely dissipated, it is submitted, by the evidence of its success when offered for sale, its supplanting and superseding these others which are now brought against it as showing the invention, and its rendering the same practically obsolete. And the final evidence of the value of the Winters and Crampton invention is supplied by the Dent Hardware Company itself, which has copied it in all essentials, making an obvious change by a mere reversal of parts so far as the physical form of the latch is concerned, seeking to evade the patent which was granted to Winters and Crampton for their invention and obtain everything which was produced by Winters and Crampton, notwithstanding that it has all of these prior constructions available for it to use.

Point E.

Subsequent Patent to Dent Company Immaterial.

The latch used by the Sanitary Refrigerator Company is manufactured by the Dent Hardware Company of Fullerton, Pennsylvania. It claims some weight should be given to the issuance of the Schrader patent, No. 1,575,647 (Dent R., 146 *et seq.*), under which it claims to operate, in considering the question of infringement.

It is the position of Winters and Crampton herein that this issuance of a subsequent patent under which an infringer operates is immaterial to the question of infringement. There have been innumerable cases of the Supreme Court and of the Circuit Court of Appeals where the defendant appeared with a patent of its own under which it operated. In Temco Electric Motor Co. vs. Apco Mfg. Co. et al., *supra*, a very recent case, the Supreme Court, on page 173, 48 Sup. Ct., said:

> "It is well established that an improver cannot appropriate the basic patent of another and that the improver without a license is an infringer, and may be sued as such." (Citing a large number of cases settling this principle.)

It has been stated and restated by the Circuit Courts of Appeals. It is believed that the following by Judge Dennison from Herman vs. Youngstown Car Mfg. Co., 191 Fed. 579, on page 584 (6th C. C. A.) is a correct statement of the law showing that the later issue of a patent on the structure which is charged to infringe is completely and wholly immaterial to the question of infringement of an earlier patent:

> "Defendant's device is manufactured under patent No. 765,406, issued July 19, 1904, to J. H. Wagenhorst, and the court below gave to this fact some force in reaching his conclusion that the device did not infringe. We think that the granting of the later patent and defendant's conformity thereto are not of importance in this case on the infringement issue. There are expressions in some reported cases implying that by the later patent the government has granted a right to make and use the article so patented,

and that such grant is inconsistent with any construction of the earlier patent which would forbid the manufacture of the later structure. Such implication rests on a fundamental error. A patent is not the grant of a right to make or use or sell. It does not, directly or indirectly imply any such right. It grants only the right to exclude others. The supposition that a right to make is created by the patent grant is obviously inconsistent with the established distinctions between generic and specific patents, and with the well-known fact that a very considerable portion of the patents granted are in a field covered by a former relatively generic or basic patent, are tributary to such earlier patent, and cannot be practiced unless by license thereunder.

"Another reason sometimes advanced for supposing that the structure of the second does not infringe the claim of the first patent is that the Patent Office has declared that a patentable difference exists. The premise is sound, but not the conclusion. In examining the second application, the Patent Office has no concern with the scope of the claim of the first and does not and must not pay any attention thereto. It is concerned only with the early disclosure by the specification and drawings. Patentable difference does not of itself tend to negative infringement. It may just as well be based upon infringement, plus improvement; and improvement may lie in addition, simplification, or variance. This is well illustrated by this Wagenhorst patent. The drawings show, and the specifications describe a structure generally similar to Herman's, but each one of the 10 claims is found to be confined to some modification and supposed improvement added to the underlying combinations of the earlier art."

V.

CONCLUSION.

The latch manufactured by Dent Hardware Company and used by the Sanitary Refrigerator Company is identical, in the sense of the patent law, with that shown, described and claimed in patent No. 1,385,102 in suit. It has the same specific elements in combination. The first, or keeper engaging arm, on the latch lever and the under outer cam edge of the keeper head are physically the same, located in the same places in both latches, and cooperate in the same way for operating the latch lever when it is in horizontal position on closing the door. The second arm and the cam cooperating therewith are physically the same in both latches but have been transposed in position in the Dent latch. When the door is closed with the latch lever in its vertical position the transposed cam on the lever and the transposed second arm on the keeper in the Dent latch are brought together and cooperate to swing the lever about its pivot, exactly as the second arm on the lever and the inclined or oblique cam at the upper outer side of the keeper head cooperate in the patent in suit.

This change in form, without change in principle or mode of operation, in an attempt to evade a patent, retaining all of its advantages, yet trying to avoid the penalty of infringement, is exceedingly common on the part of infringers and has, it is submitted, been universally condemned by the Courts, which, in such cases, seek to penetrate the disguises attempted by the infringer and hold the infringer liable where it infringes in such manner.

Claims 1, 2, 3, 4 and 7 of patent 1,385,102, construed and interpreted in the light of the disclosure on which they are drafted, apply clearly and directly, in the sense of the patent law, to the construction of latch manufactured by the Dent Hardware Company and sold to the Sanitary Refrigerator Company in the same way that they apply to the disclosure on which they are drafted. Other than this mere change in form, involving no change whatever in the cooperation of the parts or elements of the structure, involving no change in principle or mode of operation, and attaining the same results throughout in the same way, there is no difference whatever in the latch of the patent in suit and the Dent latch charged to infringe.

Furthermore, the claims 1, 2, 3, 4 and 7 of the patent in suit read literally on the Dent latch structure, for the inclined oblique cam member projected laterally from the latch lever of the Dent latch is a second arm on the lever and the lug at the side of the head of the keeper is a part of the head of the keeper against the outer upper side of which the inclined oblique cam (Dent's second arm) engages for swinging the lever from its vertical position to keeper engaging position.

While in no sense a pioneer in the art of refrigerator latches, the latch of the patent in suit is a very meritorious construction, evidenced not only by its immediate acceptance and large sales when it entered a highly competitive field crowded with latches already in use, supplanting and superseding and rendering the same substantially obsolete, but it is also evidenced by the actions of the Dent Hardware Company, which had and which still has the other old springless pivoted latches available for use; like the Condit latch, the Dent latch of the Dent patent (Dent R., 120) which it

had previously been making; the Dent 1914 latch of the Schrader patent, No. 1,114,296 (Dent R., 129); the Keil latch, the patent on which has long since expired; or the Charles latch, on which the patent likewise has long since expired. Yet it has abandoned these latches, free for it to use, and manufactures the latch which is in controversy in this suit. It left the latches which were free and open for it to use to encroach on the Winters & Crampton patented latch with the inevitable litigation which resulted therefrom.

The Patent Office allowed the claims 1, 2, 3, 4 and 7 without change or amendment of any kind, with the Keil and Dent patents before the Examiner, and with a full description in the specification of the swinging lever Condit latch, admitted by the applicants to be old.

These circumstances, it is submitted, show conclusively that the structure of latch invented by Winters and Crampton was one of merit, proven to be of merit in all the ways in which merit proves itself in patented constructions, that it was novel and of particular utility and that it was an invention in accordance with all of the tests which can be applied to show the presence or absence of invention.

It is further submitted that infringement is clearly shown. Even under the most restricted construction which could be given to the claims, the infringement is evident because of the complete and absolute identity under the patent law of the Dent latch sold to Sanitary Refrigerator Company with the latch of the patent in suit, in which case the question of the scope of the claims becomes merely academic, as stated by Judge Hand, by reason of the faithful reproduction of the latch in suit by the Dent Company, except for the mere reversal in parts, many times noted in this brief.

And it is further submitted that the Dent Hardware Company was concluded by the judgment of the Seventh Circuit Court of Appeals, entered February 9th, 1928, of which the Court of Appeals for the Third Circuit had knowledge, evidenced by the recognition given in its opinion handed down October 4th, 1928.

Respectfully submitted,

ALEXANDER F. WINTERS AND
BASIL R. CRAMPTON.

By FRANK E. LIVERANCE, JR.,
JOHN BOYLE, JR.,
Counsel for Winters and Crampton.

Grand Rapids, Michigan,
December 21, 1928.

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CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States.

SANITARY REFRIGERATOR COMPANY,
Petitioner,
vs.
ALEXANDER F. WINTERS AND BASIL R. CRAMPTON,
Respondents.
No. 128. 4

ALEXANDER F. WINTERS AND BASIL R. CRAMPTON,
Petitioners,
vs.
DENT HARDWARE COMPANY,
Respondent.
No. ~~547~~. 14

MEMORANDUM FOR WINTERS & CRAMPTON.

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DENT HARDWARE COMPANY,
Respondent.
} No. 547.

MEMORANDUM FOR WINTERS & CRAMPTON.

At the end of the presentation of the argument for Winters and Crampton in the above cases, to the Supreme Court on Friday, April 19th, it was suggested by the Chief Justice that a late statutory provision might have bearing upon the question of *res adjudicata* which was raised by the petitioners in Case No. 547 and permission was given by the Court to file a memorandum should any statutory provision be discovered which had any bearing on this matter.

The point of discussion was concerned largely with the matters of "final and conclusive" judgment and "final" decree, it being urged on behalf of the peti-

tioners in Case No. 547 that the Judgment of the Court of Appeals for the Seventh Circuit in Case No. 128 was final and conclusive as to the questions of validity and infringement of the patent notwithstanding that an accounting was ordered which would necessitate subsequent proceedings in the case.

It is believed that the statutory provision in the mind of the Court is that contained in Title 28, Section 227a, United States Code, reading as follows:

> "When in any suit in equity for the infringement of letters patent for inventions, a decree is rendered which is *final* except for the ordering of an accounting, an appeal may be taken from such decree to the Circuit Court of Appeals; provided, that such appeal be taken within thirty days from the entry of such decree or from the date of this act (section); and the proceedings upon the accounting in the court below shall not be stayed unless so ordered by that court during the pendency of such appeal." (Italics ours.)

The title of this Act, which is of the date of February 28, 1927, was as follows:

> "An Act to amend Section 129 of the Judicial Code, allowing an appeal in a patent suit from a decree which is *final* except for the ordering of an accounting." (Italics ours.)

It appears from this section of the Statutes of the United States that the Congress considered the decree of the trial court in a patent suit, when questions of validity and infringement were to be determined, as final upon such matters, being of course completely final if the determination was that the patent was either invalid or not infringed, and "final except for

the accounting" if the determination was that the patent was valid and infringed; and necessarily when the appeal from any such decree to the Circuit Court of Appeals had been heard and decided, the order of judgment of such Circuit Court of Appeals on such questions of validity and infringement was necessarily final and also *conclusive* as to the validity and infringement of the patent.

The term "interlocutory" was not used in this Act of Congress directed solely to patent infringement suits. It is believed that, as a matter of proper inference if not direct statement, it was intended that a patent suit was to be considered, the first part thereof, as a determination which should be final and conclusive of the validity and infringement of the patent; and if the patent was held valid and infringed, then followed the second part of the suit, the accounting, proceedings under which did not and could not affect the previous final and conclusive determination of the questions of validity and infringement.

Very respectfully,

FRANK E. LIVERANCE, JR.,
JOHN BOYLE, JR.,
Counsel for Winters and Crampton.

Grand Rapids, Michigan,
April 23, 1929.

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Office Supreme Court, U. S.
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IN THE

Supreme Court of the United States

No. 9[redacted]4 October Term 1927.

SANITARY REFRIGERATOR CO.,
Petitioner,

v.

ALEXANDER F. WINTERS and
BASIL R. CRAMPTON,
Respondents.

BRIEF FOR RESPONDENTS.

F. E. LIVERANCE, JR.,
JOHN BOYLE, JR.,
Grand Rapids, Michigan.,
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WEST MICHIGAN PRINTING CO., GRAND RAPIDS, MICH.

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PETITIONER

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ALEXANDER F. WINTERS AND
BASIL R. CRAMPTON, RESPONDENTS

BRIEF FOR RESPONDENTS.

FRANK E. LIVERANCE, JR.,
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TRI-ART PRINTING CO., GRAND RAPIDS, MICH.

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vs.

ALEXANDER F. WINTERS, AND
BASIL R. CRAMPTON, RESPONDENTS

BRIEF FOR RESPONDENTS.

THE OPINIONS OF THE COURTS BELOW.

This case is before the Supreme Court of the United States because of diversity of opinion and conflict in decision on the part of the Circuit Courts of Appeals for the Seventh and the Third Circuits.

The conflict in decision is solely in respect to the matter of infringement of certain claims of United States Letters Patent No. 1,385,102, issued to the respondents on the 19th day of July, 1921 for a Latch. All courts which have had to pass upon the question are united in their findings that claims 1, 2, 3, 4 and 7 of the patent in question are valid.

The opinion of the Court of Appeals for the Seventh Circuit is reported in 24 Fed. (2d) page 15.

The opinion of the Third Circuit Court of Appeals was handed down October 4, 1928 and at the time of writing this brief has not been published in any report. Copies thereof accompanied the petition for rehearing of the petition for a writ of certiorari to the United States Circuit Court of Appeals for the Seventh Circuit which was filed in the Supreme Court on October 11, 1928.

STATEMENT OF THE CASE.

The Latch of Patent No. 1,385,102.

The patent 1,385,102 is in the Record beginning page 72 and ending page 77. Five of the claims (Rec. pp. 76 and 77) are involved in the present cause and have numbers 1, 2, 3, 4, and 7.

The validity of the claims is not in question.

The sole question to be determined is whether or not the structure used by the petitioner on its refrigerators and sold with the refrigerators is an infringement of claims 1, 2, 3, 4 and 7 as found by the Circuit Court of Appeals for the Seventh Circuit.

The latch which is the subject matter of patent No. 1,385,102 and disclosed in the drawings (Rec. pp. 72 and 74) includes two parts, namely, a keeper structure permanently secured to the door jamb 2 of the refrigerator and a pivotally mounted latch lever structure permanently secured to the front face of the door adjacent its free vertical edge.

The keeper has a flat base 14 attached to the door jamb, an outwardly projecting post 15 and a substantially triangular shaped head 17 with two outer cam edges 18 and 19, the former at the upper outer side of the head and the latter at the lower side. The head depends below the post 16 and forms a hook open at its under side, the rear inclined edge 20 of the head being at one side of the recess of the hook into which one arm of the latch lever enters when the door is closed.

The pivoted lever construction attached to the door includes a supporting fixture having a flat base 3 secured to the door, an outwardly extending post 5 and an overhanging arm 6 spaced from and parallel to the base 3.

Between the base and the overhanging arm 6 the latch lever 7 is mounted for a swinging movement in a plane parallel to the front face of the door. The lever is pivoted between its ends on a pivot pin 8 and at one side of the pivot the lever is formed into an operating handle 11. At the other side of the pivot the lever provides a keeper engaging arm 9, hereafter referred to as the *first* arm. There is also a *second* arm 12 on the lever which projects laterally therefrom at the handle side of the pivot.

The lever is limited in movement to substantially a 90° swing. When the door is open the lever may occupy a horizontal position, in which case the handle side of the lever engages against the upper side of the post 5 to hold the lever horizontal. Equally well, the lever may occupy a vertical position, as in Fig. 4, in which case a side of the first arm 9 engages against the lower side of the post 5.

The opposite sides of the post 5 furnish stops, indicated at 5*a*, which limit the extent of swing of the lever in opposite directions and control its movements so that it must occupy either a vertical or horizontal position and yet may equally well occupy either position.

Should the lever be in its horizontal position when the door is open, closing the door brings the first arm 9 against the cam edge 19 of the keeper head and the inner cam side 10 of the arm rides against the edge or side 19 of the keeper automatically throwing the lever toward vertical position (as in Fig. 6, Rec. p. 74). The movement continues until the inner side of the second arm 12 strikes against the upper cam edge 18 of the head.

The upward swinging movement imparted to the lever is rapid under the momentum of the relatively heavy refrigerator door, and when the second arm 12 strikes against the edge 18 of the keeper head, the swinging movement of the lever is reversed and it is thrown back with considerable speed, bringing the first arm 9 under the hook of the keeper and wedging it against the inclined inner edge 20 of the keeper head. This is described in lines 37 to 54 inclusive, (Rec. p. 76).

If on the other hand the pivoted latch lever is in vertical position, closing the door brings the second arm 12 at its inner side 13 against the upper cam edge 18 of the keeper head and the lever is quickly swung in a clockwise direction and the first arm 9 brought into wedging engagement with the hook of the keeper, that is, back of the head and under the post 16 and wedged against the inner inclined side 20 of the keeper head. This is described in lines 17 to 27 (Rec. p. 76).

In either case, whether the lever be in its vertical position or horizontal position when the door is closed merely swinging the door to closed position causes an automatic wedging engagement of the first arm 9 of the lever with the keeper, and such wedging engagement is effected by the rapid swinging movement given to the lever whereby the keeper engaging first arm 9 wedges tightly against the inner inclined side 20 of the keeper head.

In opening the door the handle 11 is grasped and swung toward upper position. The lever usually stays in its upper vertical position. It however, is a free swinging lever and may accidentally fall to horizontal position or be knocked or brushed by the clothing to such position. Whatever may occur, closing the door automatically effects a tight latching without detriment to the latch, the door or the door jamb of the refrigerator.

Petitioner's Latch.

The latch used by the petitioner, and which has been held to infringe the patent owned by the respondents, is in substantial accordance with the disclosure of a certain patent to Schrader, No. 1,575,647, issued March 9, 1926. (Rec. pp. 156-159.)

Such latch likewise has a keeper structure for attachment to a refrigerator door jamb and a pivoted swinging latch structure for attachment to a refrigerator door adjacent its free vertical edge.

The keeper has a flat base b^1, an outwardly extending post terminating in a depending hook head, the outer edge of which, indicated at b^5, is a cam edge corresponding to the under outer cam edge 19 of the head of the patent in suit. Said hook at its inner edge is also in-

clined upwardly as indicated at b^4 (Fig. 3, Rec. p. 156) corresponding to the inner inclined edge 20 of the patent in suit. The keeper at the side thereof adjacent the door has a laterally projecting pin b^8 with a cam side b^9.

The pivoted swinging lever structure includes a permanent fixture having a base c^3 secured to the front side of the door, an outwardly extending post and an overhanging arm c^4 parallel to the base. The latch lever is pivotally mounted between its ends on this fixture, lying between the base and overhanging arm and swinging on a pivot c^2. At one side of the post the lever is formed into a handle c^5 and at the other side into a keeper engaging or *first* arm c^7. Extending laterally from the lever at the handle side of the pivot is a cam c^1, which in the patent (Rec. p. 156, Fig. 4) is of arcuate form.

The actual latch used by the Sanitary Refrigerator Company is slightly different in design from that disclosed in the Schrader patent, the inclined cam c^1 of the patent being substantially a straight inclined or oblique cam and not arcuate as shown, while the design of the head of the keeper much more closely approximates the design of the patent owned by respondents in shape and form. The action, however, is not changed in any respect.

The latch lever in the latch used by the petitioner has a free swinging movement in a plane parallel to the face of the refrigerator door, is stopped when the handle engages against the upper side of the outstanding post on which the lever is mounted, or when it is in horizontal position; and is stopped when swung in the other direction by the keeper engaging arm c^7 coming against the opposite side of the same post. The lever freely swings

through this arc of 90° between its vertical and its horizontal positions and may equally well occupy either position, and is quite as liable to occupy one position as the other when the door is opened.

If the latch lever should be in horizontal position when the door is open, closing the door causes the inner side of the arm c^7 to ride against the outer edge b^5 of the keeper head, throwing the lever upwardly toward vertical position until the inclined cam c^1 strikes the pin b^8 whereupon the movement of the lever is reversed and it is swung back with considerable speed and momentum to bring the keeper engaging arm c^7 into operative wedging engagement with the inner inclined side b^4 of the keeper hook; exactly as with respondents' latch.

If, on the other hand, the latch lever is in vertical position, closing the door brings the cam c^1 against the cam side b^9 of pin b^8 and the lever is quickly swung in a clockwise direction and brings the keeper engaging arm c^7 into operative wedging connection with the keeper hook.

Exhibits of the latch in suit owned by Winters & Crampton and of the latch used by the petitioner, Sanitary Refrigerator Company are before the court. Plaintiffs' Exhibit No. 2 is a mounted latch device built exactly in accordance with the disclosure of patent No. 1,385,102 in suit. Plaintiffs' Exhibit No. 3 is a mounted latch used by the Sanitary Refrigerator Company, substantially in accordance with the disclosure of the Schrader patent (Rec. p. 156) with such variations in design as have been noted.

ARGUMENT.

Summary of Points.

Point A. There is identity between the patent in suit and the latch used by the petitioner; in function and result, in principle of operation and in essential structure.

There is substantial identity in the physical structure of the latch of the patent in suit and the latch used by petitioner notwithstanding a reversal of parts, wherein the second arm on the lever of the patent in suit has been reversed to the keeper in the latch used by petitioner, and the cam cooperating therewith at the upper outer edge of the keeper of the patent in suit has been reversed to the lever in the latch used by petitioner. Such mere reversal is an alteration in form only and is identity in the sense of the patent law.

Union Paper Bag Mac. Co., et al. vs. Merrick Murphy, et al., 97 U. S. 120; 24 L. Ed. 935.

Hoyt vs. Horn, 145 U. S., 302; 36 L. Ed. 713; 12 Sup. Ct. 922.

Devlin, et al., vs. Paynter, et al., 64 Fed. 398.

Anchor Cap & Closure Corp., vs. Prichard, 232 Fed. 156.

Crown Cork & Seal Co. vs. Aluminum Stopper Co., 108 Fed. 845.

Walker on Patents, 5th Ed., Sec. 348, page 432.

Columbia Wire Co. vs. Kokomo Steel & Wire Co., 143 Fed. 116.

Walker vs. Giles, et al., 218 Fed. 637.

Simplex Window Co. vs. Hauser Reversible Window Co., 248 Fed. 919.

Telescope Cot & Bed Co. vs. Gold Medal Camp Furniture Mfg. Co., 229 Fed. 1002.
Pittsburgh Water Heater Co. vs. Beler Water Heater Co., 228 Fed. 674.

Point B. Whether a pioneer or an improvement patent, a meritorious patent is entitled to liberal treatment and to the application of the rule "ut res magis valeat quam pereat."

Eibel Process Co. vs. Minnesota & Ontario Paper Co., 261 U. S. 45; 43 Sup. Ct. 322.

Point C. The improvement in latches defined in claims 1, 2, 3, 4 and 7 of respondents' patent in suit is meritorious as evidenced by its immediate acceptance, large sales and substantial supplanting of other springless pivoted lever refrigerator latches and, as such, is entitled to a liberal construction and a forbidding of appropriation thereof by an infringer who copies the whole substance of the invention.

Eibel Process Co. vs. Minnesota & Ontario Paper Co., 261 U. S. 45; 43 Sup. Ct. 322.
Temco Electric Motor Co. vs. Apco Mfg. Co., 48 Sup. Ct. 170.

Point D. The claims 1, 2, 3, 4 and 7 of the patent in suit are not limited so as to require any construction holding said patent in suit to the exact specific structure illustrated in the drawings and described in the specification. There has been no abandonment of any part of the invention by reason of failure to claim the same.

Point E. The prior patents and the earlier structures relied upon by the petitioner do not have the invention of the patent in suit and do not necessitate a construction of the claims 1, 2, 3, 4 and 7 of said patent to limit the invention to a point which will permit the petitioner to appropriate all of the advantages of the invention thru a mere formal alteration of structure involving a mere reversal of one stationary and one fixed part without changing, in any way what the respondents first invented.

Point F. That the latch structure used by the petitioner is made under a subsequent patent is immaterial to the question of infringement. One who obtains a later patent cannot appropriate and infringe an earlier dominating patent of another without license.

Hoyt vs. Horne, Supra.
Temco Electric Motor Co. vs. Apco Mfg. Co., Supra.
Cochrane vs. Deener, 94 U. S. 780; 24 L. Ed. 139.
Cantrell vs. Wallick, 117 U. S. 689; 29 L. Ed. 1017.
Herman vs. Youngstown Car Mfg. Co. (C. C. A. 6th), 191 Fed. 579.
Yancey vs. Enright, C. C. A., 230 Fed. 641.
French vs. Buckeye Iron & Brass Wks., C. C. A. 6th; 10 Fed. (2d) 257.

Point A.

The patented latch uses a fixture attached to the door, including a base, an outwardly extending post and a laterally overhanging arm parallel to the base. The latch used by petitioner has a like fixture identical in every

respect. The patented latch has a lever pivotally mounted between its ends, formed into an operating handle at one side of the pivot and a keeper engaging arm at the opposite side of the pivot. The latch used by petitioner has a like lever with the same handle and keeper engaging arm pivotally mounted in a like manner between the base and overhanging arm of the fixture. In both, the lever swings freely through a 90° arc in a plane parallel to the front of the door, is stopped by the handle engaging the upper side of the post of the fixture when the lever is horizontal and by the keeper engaging arm striking against the opposite side of the post of the fixture when the lever is vertical. The keeper in both the patent in suit and the latch used by petitioner has a base, an outwardly extending post, and a head depending from the outer end of the post forming a hook for the keeper engaging arm; and the lower outer edge of the keeper head in both is a curved cam against which the keeper engaging arm of the lever strikes when the door is moved to closed position with the lever horizontal.

The physical identity described so far is exact and unchanged in any respect.

The latch lever of the patent in suit has a second arm projecting laterally therefrom and the keeper has a cooperating cam at the upper outer edge of the keeper head. In the latch used by the petitioner a pin projects laterally from the side of the head toward the latch lever and an inclined cam to cooperate therewith projects laterally from the side of the lever.

There has been a transfer of the second arm of the lever of the patent in suit to the keeper, and a transfer

of the cam cooperating therewith from the keeper to the lever, in the latch used by petitioner.

The accompanying drawing illustrates the latch of the patent in suit under the heading, "Plaintiffs' Latch" and the latch used by the petitioner under the heading, "Defendant's Latch." In plaintiffs' latch a second arm is noted projecting laterally from the latch lever and the inclined oblique cam at the upper outer edge of the head of the keeper is illustrated in solid black. In defendant's latch the inclined oblique cam has been reversed or transferred to the lever and the second arm has been reversed or transposed to the keeper.

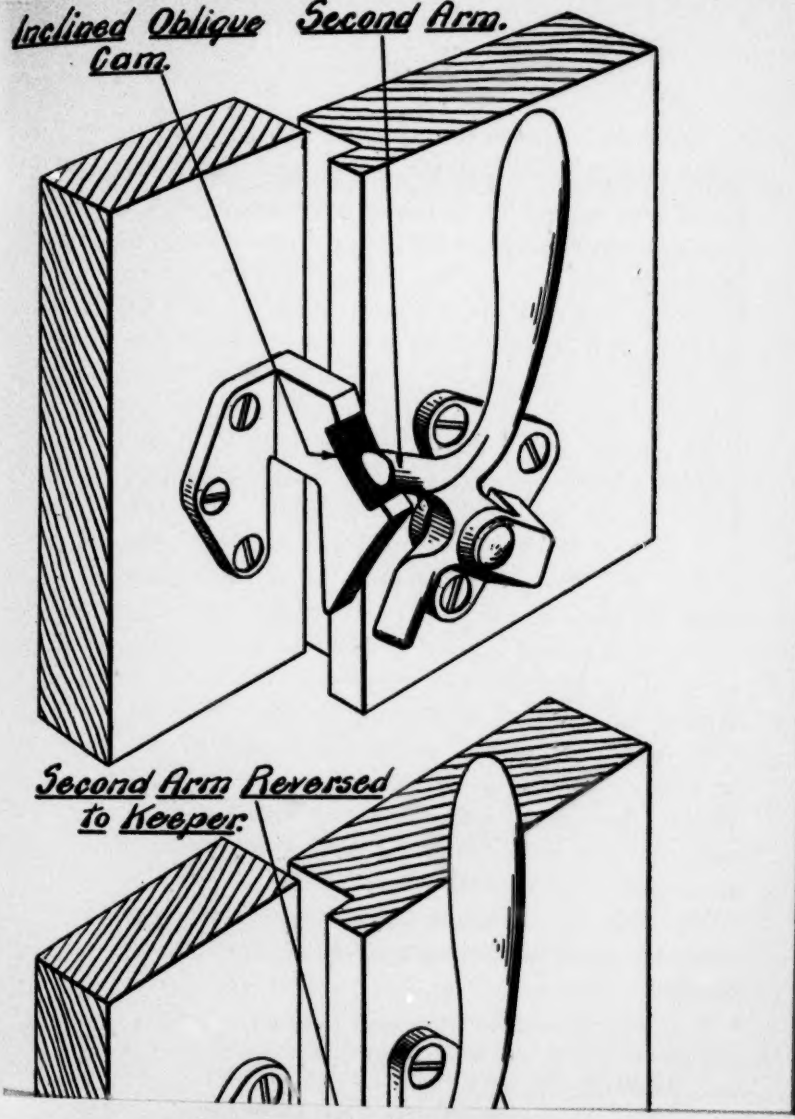
This, it is contended, is the merest alteration in form and reversal of parts that can be done and when it is attempted it is held to be infringement under the principles of the Union Paper Bag Machine Co., et al., vs. Merrick Murphy, et al., Supra.

The patent in the case of Union Paper Bag Machine Co., et al., vs. Merrick Murphy, et al., was concerned with a paper bag making machine. Paper bag making machines were very old, or as the opinion of the Supreme Court says:

> "Machines for making paper bags are old, as both sides admit; and the evidence in this case shows that they have been constructed by many persons and in various forms for more than twenty years, and with more or less utility. Neither party, in this case, claims to be the original and first inventor of an entire machine of the kind; nor could such a claim, if made, be sustained, in view of the admitted state of the art."

The matter which was in issue in this case related to the mechanism for cutting the paper. In the patent the

Plaintiffs' Latch



cutter was movable, was lifted vertically, and descended by its own weight. The paper was passed over a stationary striker and when the cutter dropped by its weight the paper was cut. In the charged infringing machine the knife was stationary under the paper, a weight in the form of a straight piece of metal was lifted and then thrown downward sharply to make a vertical blow upon the paper and cause the knife to cut the paper as effectively as the cutter did in the machine of the patent. That is, a knife and a striker were used in both machines. In the patent the striker was stationary, the paper was over it, and the knife dropped and moved against the striker with the paper between. In the infringing machine the knife was stationary, the paper over it and the striker was moved against it with the paper between, a reversal in position and movement of the knife and striker but with an attainment of the same result in both cases. There was relative movement of the knife and striker in both cases though in one case, that of the patent, the striker was stationary and the knife movable, while in the infringing machine the knife was stationary and the striker was movable.

The Supreme Court found that these two machines were identical in the sense of the patent law holding that:

> "Except where form is of the essence of the invention, it has but little weight in the decision of such an issue, the correct rule being that, in determining the question of infringement, the court or jury as the case may be, are not to judge about similarities or differences by the names of things, but are to look at the machines or their several devices or elements in the light of what they do, or what office or function they perform, and how they perform it, and

> to find that one thing is substantially the same as another, if it performs substantially the same function in substantially the same way to obtain the same result * * *."

In the present case, in the patent No. 1,385,102, the second arm (numbered 12, Rec. p. 74) is on the movable lever and moves with it. The cooperating inclined or oblique cam 18 is on the keeper head and is stationary. In the latch used by the petitioner the second arm is on the keeper head and is stationary, being what is called the pin b^8 in the Schrader patent, No. 1,575,647 (Rec. p. 156). The cooperating cam c^1 is on the lever and is movable with it. The pin b^8 and the cam c^1 of the latch structure shown Rec. p. 156 work together, cooperate together, serve exactly the same functions, no more and no less than the arm 12 and the cam edge 18 of the structure of the patent in suit shown Rec. p. 74. There has been the same type of alteration in form of the latch patent in suit by the infringer in this case as was done by the infringer in the Union Paper Bag Machine Co. case; and in the sense of the patent law they are the same thing, doing the same work in the same way and accomplishing the same result.

This exact equivalent and, therefore, identity in the sense of the patent law is set forth first in this brief for the reason that it will obviate the necessity for any further consideration of the case. The claims 1, 2, 3, 4 and 7 are valid. Both trial courts and appeal courts found them so. If there is this complete identity in the sense of the patent law as set forth by the Supreme Court case cited, it is immaterial whether the construction of the claims be broad, narrow or otherwise for no matter

how narrow a construction or interpretation be given, complete identity of a charged infringing structure with the patented structure in the sense of the patent law necessarily proves infringement of even the narrowest claim that a patent may have, or of any claim under the narrowest construction and interpretation that is given to it. One of the lower courts, that of the Southern District of New York, in Anchor Cap & Closure Corp. vs. Prichard, supra, by Judge Learned Hand, now judge of the Circuit Court of Appeals for the Second District, on page 160 of 232 Fed. in treating patent No. 874,201, discussed the structure of the defendant's machine therein, called attention to the reversal of parts of the machine of the patent in suit, called attention to the prior art, and concluded:

> "It is quite possible that the scope of the patent must be held *strictly to the disclosure* itself; but that question is academic here for the defendant has copied the machine faithfully except for the *mere reversal of the parts.*" (Italics ours.)

In Crown Cork & Seal Co. vs. Aluminum Stopper Co., Supra, on page 866 of 108 Fed., the Circuit Court of Appeals for the Fourth Circuit said:

> "The court will look through the disguises, however ingenious, to see whether the inventive idea of the patentee has been appropriated, and whether the defendant's device contains the material features of the patent in suit, and will declare infringement even when those features have been supplemented and modified to such an extent that the defendant may be entitled to a patent for the improvement." (Citing Clough vs. Gilbert & Barker Mfg. Co., 106 U. S. 164, 27 L. Ed. 134; and same, 106 U. S. 178, 27 L. Ed. 138.)

Section 348, p. 432, Walker on Patents, 5th Ed., says:

> "Changing the relative positions of the parts of a machine or manufacture does not avert infringement, where the parts transposed perform the same respective functions after the change as before." (Citing ten supporting cases.)

In Columbia Wire Co. vs. Kokomo Steel & Wire Co., 143 Fed., on page 122, the Court of Appeals for the Seventh Circuit said:

> "We are of the opinion that the means thus transposed in the appellee's machine, if not within the definition of colorable evasion which infringe the patent in any view of its scope, are plain appropriations of the essence of the Bates conception by equivalent means, and infringements of the patents within the well settled rule referred to. All the elements of the patent combination are employed with substantial identity in their use, and departure appears from the letter of the claims only in the arrangement of these elements, without substantial difference in the principle of operation. The policy and rules of the patent law require that the patentee be protected against such evasion of a wording of the claim in form or non-essential details when the substance of the invention is thus used and is unmistakably shown in the specification and claims. (Citing six supporting cases of the Supreme Court and one by a Circuit Court of Appeals.")

In Walker vs. Giles, et al., 218 Fed., on page 638, the Court of Appeals for the Second Circuit said:

> "The only change of organizations which defendant has made is the placing of the flange, which acts to hold the hub in place, on the gear rack instead of on the hub. In one case the flange rests on the teeth of the gear rack; in the other the teeth of the hub

rest on the flange. This is a mere reversal of parts, and under well settled principles will not avoid infringement."

In Simplex Window Co. vs. Hauser Reversible Window Co., 248 Fed., on page 926, the Circuit Court of Appeals for the Ninth Circuit said:

"It is apparent, from a comparison of the two devices, that they both produce the same result. The real question is: Do they do so by substantially the same means? It is needless to cite the numerous cases in support of the law clearly stated in section 348 of Walker on Patents, the substance of which is that changing the relative position of the parts of a machine does not avert infringement, where the parts transformed perform the same respective functions after the change as before, but that such change does do so where the changing of those positions so changes the functions of the parts that the machine acquires a substantially different mode of operation, even though the ultimate result remains the same."

In Telescope Cot & Bed Co. vs. Gold Medal Camp Furniture Mfg. Co., 229 Fed., the Court of Appeals for the Second Circuit, on page 1004, said:

"Infringement seems too clear for discussion. In the Herman cot the slots are in the braces and the pins are on the brackets connected to the legs. In defendant's cot the slots are in the brackets and the pins are on the braces. It is wholly immaterial on which parts of the combination the slots and pins are respectively located so long as they function alike in both structures; this they do because defendant's slots in the brackets are so located that the play of the pins therein is in the same direction as the length of the braces. The amount of this longitudinal play is slightly less in defendant's structure because the slots are somewhat shorter, but they are long enough

> to secure a substantial longitudinal play. Infringement may be found although the infringing device does not obtain the advantages of the invention to the fullest extent."

In Pittsburgh Water Heater Co. vs. Beler Water Heater Co., 228 Fed., the Court of Appeals for the Third Circuit, on page 677, said:

> "That mere departure or reversal in order and form, while identity or principle, process, or result are retained, will not serve to avoid infringement, is a fundamental principle of patent law that needs no supporting citations."

In Devlin vs. Paynter, et al., 64 Fed. 398 (3rd C. C. A.), the Second Syllabus says:

> "A union for steam pipes, consisting of a head member having a seat of soft metal with a concave face, and a tail member having a convex face, is infringed by a union which differs only in the facts that the convex face is on the head member and the concave face is on the tail member, and that the soft metal is on the convex face instead of on the concave face."

The various cases cited of the Circuit Courts of Appeals are decisions of courts of final resort in patent matters and beyond which, as soon as the establishment of Circuit Courts of Appeals took place, a patent case seldom went. Changes in relative position of parts, without departure from the invention and the principle of operation thereof, which do not break up the combination and make a new combination with a greater or less number of elements in the combination than are defined in the claims of a patent which is charged infringed, and particularly where there is a mere reversal of two cooperating parts in a combination structure, does not

avoid infringement and has been universally so held by all courts of last resort. This principle of law as stated by the Third Circuit Court of Appeals is so well settled as to require no supporting citation.

The question then resolves itself down to whether or not the latch used by the petitioner consists merely of a reversal of the inclined or oblique cam, at the upper outer edge of the keeper head in respondents' patent, to the lever, and a reversal of the second arm from the lever to the keeper; or whether there was something more than this done so as to obtain the results in a different manner and in accordance with a different principle.

The cooperation of the second arm on the lever of respondents' patent in suit and the upper outer cam edge of the keeper head takes place in opening the door and also in closing the door when the lever is in its vertical position. In opening the door the inner side of said second arm rides on the outer surface of the cam edge 18 of the keeper head, prying the door open, if for any reason it is tight or sticks, as many times happens with refrigerators, due to swelling because of moisture.

In the latch used by the Sanitary Refrigerator Company the inner side of the inclined oblique cam, which has been transferred to the lever, rides against the outer side of the lug or second arm on the keeper which has been transferred from it to the lever and the door is opened, even though it should stick, by reason of the wedging cam action between the cam on the lever and the lug or pin, or second arm (or whatever it may be called) on the keeper in exactly the same way and with exactly the same pivotal movement imparted to the lever.

In closing the door with the latch structure of respon-

dents' patent with the lever in vertical position, the inner side of the second arm strikes and rides against the upper outer edge 19 of the keeper head with an automatic turning of the lever in a clockwise direction into engagement with the keeper hook. With the latch used by the petitioner the inner side of the inclined oblique cam which has been transferred from the keeper to the lever strikes and rides against the upper outer side of the second arm which has been transferred to the keeper, with a like automatic clockwise movement of the lever into engagement with the hook of the keeper.

There has been no new combination made by this mere reversal of one stationary and one movable part which in their reversed positions cooperate in the same way by having the same relative movements with respect to each other. This is the kind of change in the relative position of the parts of a machine meant in the first sentence of the first paragraph of Section 348 of Walker on Patents, where the change in relative position in no way affects the respective functions of the parts which have been changed. It is not a change like that referred to in the second paragraph of Section 348 of Walker on Patents, where the changing has so changed the functions of the parts that the machine acquires a substantially different mode of operation.

The modes of operation of the latch of the patent in suit and of the latch used by the petitioner are identical in every respect. There has been no change in function and the only thing that can be said, and which was urged before the Circuit Courts of Appeals for both the Third and Seventh Circuits, namely, that the location of the inclined oblique cam on the latch used by petitioner is

closer to the pivot of the lever than is the second arm in the latch of the patent, while the lug or reversed second arm on the keeper head is located inward from the outer upper edge of said keeper head, thereby making a closer coupling of the two cooperating parts (the second arm and the inclined cam), is merely a slight change in the leverage and makes only a slight difference in degree of the force which may be secured in opening a door which sticks, though the way that the door is pried open remains exactly the same.

Most rearrangements and reorganizations of elements which make a new invention, in fact, it is believed all of such reorganizations and rearrangements which really make a new combination are reorganizations and rearrangements which go far beyond merely reversing two co-operating parts, one of which is stationary in the device of the patent and the other of which is movable, while in the charged infringing device the stationary and movable parts have been merely reversed. Mere reversal, of this kind has always been, it is submitted, considered identity in the sense of the patent law irrespective of how strict a construction is made of the claims of a patent. For the question of the breadth or scope of the patent becomes merely academic as Judge Hand has said, where there has been a faithful copying of the patented mechanism except for such mere reversal; because, in fact, in such cases, in the sense of the patent law, there is absolute and complete identity which will bring the infringing article within the scope of any valid claim of the patent whatever its construction may be.

Point B.

Patent No. 1,385,102 is not a pioneer refrigerator latch patent. Refrigerator latches in many forms had been made for many years before. Latches had been attached to doors and keepers to door jams, or the keepers to the doors and the latch structures cooperating therewith to the door jambs. The improvement made by the respondents herein, while not of a pioneer character, was nevertheless a very meritorious and practical improvement. It is entitled to a construction, if possible, which will give effect to the patent rather than destroy it; and a patent does not have to be a pioneer nor one making a long step in advance in the art in order to be entitled to liberal treatment if, in fact, the invention which has been made is meritorious.

The Supreme Court has recently so stated in Eibel Process Co. vs. Minnesota & Ontario Paper Co., Supra, as follows, on page 328, 43 Sup. Ct. Reporter:

> "In administering the patent law, the court first looks into the art, to find what the real merit of the alleged discovery or invention is, and whether it has advanced the art substantially. If it has done so, then the court is liberal in its construction of the patent, to secure to the inventor the reward he deserves. If what he has done works only a slight step forward, and that which he says is a discovery is on the border line between mere mechanical change and real invention, then his patent, if sustained, will be given a narrow scope, and infringement will be found only in approximate copies of the new device. It is this differing attitude of the courts toward genuine discoveries and slight improvements that reconciles the sometimes apparently conflicting instances of construing specifications and the finding of equivalents in alleged infringements. In the case

before us, for the reasons we have already reviewed, we think that Eibel made a very useful discovery, which has substantially advanced the art. His was not a pioneer patent, creating a new art; but a patent which is only an improvement on an old machine may be very meritorious, and entitled to liberal treatment. Indeed, when one notes the crude working of machines of famous pioneer inventions and discoveries, and compares them with the modern machines and processes exemplifying the principle of the pioneer discovery, one hesitates in the division of credit between the original inventor and the improvers, and certainly finds no reason to withhold from the really meritorious improver, the application of the rule 'ut res magis valeat quam pereat,' which has been sustained in so many cases in this court. Winans vs. Denmead, 15 How. 338, 341, 14 L. Ed. 717; Corning vs. Burden, 15 How. 265, 269, 14 L. Ed. 683; Turrill vs. Railroad Co., 1 Wall. 491, 510, 17 L. Ed. 668; Rubber Co. vs. Goodyear, 9 Wall. 788, 795, 19 L. Ed. 566; McClain vs. Ortmayer, 141 U. S. 419, 425, 12 Sup. Ct. 76, 35 L. Ed. 800."

Point C.

The automatic swinging lever latch structure disclosed in the patent 1,385,102 in suit, is one of merit and one which when it was produced was immediately sold in large quantities. Mr. Crampton, one of the inventors, states the success attending the latch as soon as it was developed. This appears Rec. pp. 10 and 11. It was sold to many of the refrigerator companies. Ninety per cent of the commercial refrigerators, grocery stores, hotels and butcher shops use the latch, and the company with which Winters and Crampton are associated sells this latch to all the commercial refrigerator companies except two or three. The latch is also sold to several household refrigerator companies. Over two million latches under

the patent in suit had been sold since the latch was developed at the time the testimony of Crampton was taken, and ninety per cent of the commercial refrigerator manufacturers use the particular latch of the patent in suit.

The latch was immediately accepted, sold in large quantities, must have taken the place of the latches previously used on ninety per cent of the commercial refrigerators, supplanting and superseding them, and as such, it is contended, is entitled to a liberal treatment by the courts, and the patent thereon not be emasculated by any construction which will destroy and not give effect to the grant. Particularly, the complete appropriation of all of the substance and value and actual structure devised by the owners of the patent in suit herein should be forbidden the petitioner herein, where an attempted evasion of the patent has been made but with complete appropriation of the same, such alterations in construction as were made being formal, but utilizing exactly the same elements in combination, working in the same way to produce the same result.

The Supreme Court very recently in Temco Electric Motor Co. vs. Apco Mfg. Co., supra, dealing with a patent which was not a pioneer, was affected in its decision by the way in which the public eagerly took the device of the patent involved and its marked success. When an art is very old, and is full of earlier structures patented and otherwise which have been used for years to fulfill a certain want, then when someone comes along and perfects a different structure in the same art and occupying the same field, which renders prior constructions, used for years, practically obsolete, it is very weighty evidence of an invention of exceptional merit. An invention of

the kind which obsoletes other structures which have been practically used for many years and which previously have been the best of their kind is entitled, it is contended, to as liberal a treatment as many first inventions in a field.

In the present case the respondents' invention made practically obsolete the so-called Condit lever described in the first paragraph (Rec. p. 75) of the patent in suit. This description of the Condit latch begins with line 13 of the first column on Rec. p. 75. A Condit latch of the swinging lever type, on the market when respondents' latch was produced, is before the court in the defendant's exhibit, 1914 latch; and the Charles patent No. 702,185. (Rec. p. 100 Etseq.) is the forerunner of the automatic Condit latch which was on the market and sold in large quantities when the respondents' latch was perfected the last of 1920. It is open for all refrigerator manufacturers to make. Its principle objection, and the one which the latch invented by respondents overcame, is that when it drops to a horizontal position with the door open it extends partly across the door opening, whereby closing the door brings the inside of the door against the latch lever with detriment either to the latch or door or both, or breaking the latch loose from its attachment to the door jamb, probably all three occurring in most instances.

If respondents had made no meritorious advance there would be no infringement with the many other old latches available and free for use. It is submitted that it does not come with very good grace from any infringer to claim there has been either no improvement or at least one of infinitesimal character, that the latch of the patent

is no better than those previously used, yet at the same time cling stubbornly to the new patented latch and not use the old. Or as was said by the Court of Appeals for the Eighth Circuit in Griswold vs. Harker, et al., 62 Fed. 389, on page 393:

> "Actions often speak louder, and frequently more truthfully, than words. It is not impossible that the reason why the appellees are not using the old devices they plead is that the improvements described in this patent have made them useless and unmerchantable. If this is not so, they can abandon the improvements of Selden and Griswold, and go back to the devices they plead."

Point D.

The claims 1, 2, 3, 4 and 7 (Rec. pp. 76-77) are not of the same scope. Claims 1 and 2 specifically define the structure illustrated in the drawings of the patent. The keeper is defined specifically. The fixture or member on which the lever is mounted is defined specifically in its three elements, "a base, an integral outstanding post projected from the base and a laterally extending arm at the upper end of the post, parallel with the base." The latch lever in its specific form is defined. These two claims are, it is contended, infringed for the reason that while the latch used by the petitioner does not correspond literally to the wording of claims 1 and 2, such avoidance of the literal wording of the claims is effected by the petitioner by merely reversing or transposing two of the parts, one on the keeper and one on the lever, to the lever and keeper, respectively. Or as said before, the second arm on the lever has been transposed to the keeper and the cam on the keeper which cooperated

therewith has been transferred from the keeper to the lever without changing or disturbing their cooperative action. Otherwise there is physical and literal identity and this mere transposition with an avoidance of the literal wording of the claims does not disturb the identity of the patented structure and the charged infringing structure in the least, in the sense of the patent law.

The next most specific claims is claim 7. The keeper is defined as attached to the casing. The lever is defined as pivotally mounted on the door *between its ends*. One end of the lever is formed into an operating handle and the other into a keeper engaging arm. A second arm projects from the handle portion of the lever a short distance from the pivot at an angle to the first arm. A keeper is defined as formed at its outer sides for engagement with the respective arms when the lever is in horizontal and vertical positions, respectively, as the door is closed. This automatically operates the lever so that it will engage under the keeper when the door is entirely closed no matter what the position of the lever.

With respect to this claim also there has been direct transposition of two parts by the petitioner, which in their transposed or reversed state co-act and cooperate in exactly the same manner as before. The Court of Appeals of the Seventh Circuit found further that from a literal standpoint the laterally extending or oblique cam on the latch used by the petitioner was the "second arm" defined in the claims and that the upper side of the lug projecting from the side of the head of the keeper was the side of the head against which the said "arm" engaged, cooperating in the same way as the second arm

of respondents' latch and the upper outer side 19 of the keeper head.

In the same way with respect to claim 4, the laterally extending oblique cam member of the petitioner's latch was considered by the Seventh Circuit Court of Appeals as the "second arm" on the lever, the upper outer side of the lug being the *upper outer side* of the keeper head in the sense of the patent.

While from the strict physical standpoint the latch which the petitioner uses is the latch of the patent in suit with a physical transposition of the second arm and the cooperating cam from latch lever to keeper and from the keeper to latch lever, respectively, inasmuch as the cooperative action of the keeper and lever is brought about by the engagement of two cam surfaces against each other, the treatment and construction given these claims by the Court of Appeals for the Seventh Circuit is logical for the reason that the reversal or transposition of parts which has been pointed out necessarily involves a reversal of two cam members; and even after the reversal is made there is not only identity in the patent sense because of such reversal but there is also identity in literal application of the terms of claims 4 and 7 because in a great many respects the two parts which were reversed or transposed have common structure, particularly with respect to the two cooperating cam surfaces.

Claim 3 broadly defines a means on the keeper and a means on the latch lever to engage with the keeper on the outer sides thereof to swing the lever into engagement with the keeper at the inner side thereof when the door is closed with the lever occupying either a horizontal or vertical position.

Claim 3 as well as claims 4 and 7, clearly is not limited in any respect by the language used to a word picture of the drawing of the patent in suit. Like most patents which have any scope at all there are several claims to the invention. In this case claims 1, 2, 3, 4 and 7 vary considerably in the terms used to define the invention. Claim 3 is of greatest breadth, claims 1 and 2 are the narrowest, claims 4 and 7 occupy an intermediate position. Abandonment by failure to claim is not present for if this was so, there would be such limitations in each and every claim that the petitioner or anyone else could leave out an element or elements of any combination defined and not substitute an equivalent therefor; or in its transposition and reversal of parts could dispense with an element or elements of the combinations defined and thus avoid infringement, as in McLain vs. Ortmayer, 141 U. S. 419, 35 L. E. 800, wherein infringement was avoided by omitting a distinctly claimed element of the combination and not substituting any equivalent to take its place. In the present case every element of the combinations defined in each of the claims 1, 2, 3, 4 and 7 is present in the petitioner's latch structure. None have been omitted, all are used, even to those most specifically set forth in claims 1 and 2 and the only change is a change in form caused by a transposition of two cooperating parts which in their transposed positions act the same as they do in the latch of the patent in suit.

Point E.

The Record, beginning on page 39, ending page 58, has the history of the application which resulted in the patent in suit. On page 52 an original claim, numbered

7, directed to the keeper alone, as appears from said claim (Rec. p. 50) was rejected and five prior patents were cited. These patents, particularly the patent to Keil, 554,448, and the patent to Dent, 670,506, were relied upon by the petitioner in the courts below as limiting or invalidating the invention of the patent in suit. The Keil patent (Rec. p. 88 et seq.) on p. 89, beginning with line 73, sets forth the operation of the Keil latch. The Dent patent, 670,506 (Rec. p. 96 et seq.) on p. 97, beginning with line 72, defines its operation. They are drop handle latches, normally dropping freely by gravity to the positions shown in Fig. 1 of each patent, having no stops to limit the swing of the lever and hold it either in vertical or horizontal positions, having no fixture with an overhanging arm parallel to the base for mounting the lever as in the patent in suit and the petitioners used latch, and having nothing of the invention defined in claims 1, 2, 3, 4 and 7. The Patent Office, though it had such prior patents before it, did not consider the patents to be anticipatory in any respect of the invention set forth in claims 1, 2, 3, 4 and 7. In fact, these claims were allowed by the Patent Office without change and as they were submitted in the first instance when the patent application was filed. The only other prior patent, that to Charles No. 702,185 (Rec. p. 100 et seq.) which was seriously urged by petitioner, has a swinging lever latch, pivotally mounted between its ends with two arms d and e both at the same side of the pivot which are successively engaged by the two inclines h and i to turn the lever from its open position, shown in Fig. 2, to the closed position shown in Fig. 1. The latch is on the door jamb, the keeper g on the door, there are no stops of any sort to

hold the lever in horizontal or vertical position. If it should be improved to have stops, as shown by the defendant's 1914 latch, one of defendant's exhibits, in its horizontal position it would stand across the door opening and be in the way of the door when the door was closed like the Condit latch described in the introduction of patent 1,385,102 in suit.

Various levers, cams, pins, arms, keepers of various sorts and the like are found in these different prior patents and prior structures. Such is usually the case, particularly at the present state of industrial development when an improvement in an art has been patented. But the mere prior production of various elements and the finding of the same in many different patents is not anticipation nor should they be considered in interpreting and construing the claims of a patent to a combination where the combination itself is new and not anticipated. That there is no anticipation of the combination is in evidence, settled by all the courts. The United States District Courts which first tried the suits involving respondents' patent, and both of the Circuit Courts of Appeals which have passed thereon, have not denied the validity of the patents in suit.

Point F.

The latch used by the petitioner is manufactured by the Dent Hardware Company of Fullerton, Pennsylvania. It claims some weight should be given to the issuance of the Schrader patent, No. 1,575,647 (Rec. p. 156 et seq.) under which it claims to operate, in considering the question of infringement.

It is the position of the respondents herein that this issuance of a subsequent patent under which an infringer operates is immaterial to the question of infringement. There have been innumerable cases of the Supreme Court and of the Circuit Courts of Appeals where the defendant appeared with a patent of its own under which it operated. In Temco Electric Motor Co. vs. Apco Mfg. Co. et al., supra, a very recent case, the Supreme Court, on page 173, 48 Sup. Ct., said:

> "It is well established that an improver cannot appropriate the basic patent of another and that the improver without a license is an infringer, and may be sued as such." (Citing a large number of cases settling this principle.)

It has been stated and restated by the Circuit Courts of Appeals. It is believed that the following from Herman vs. Youngstown Car Mfg. Co., 191 Fed. 579, on p. 584 (6th C. C. A.) is a correct statement of the law showing that the later issue of a patent on the structure which is charged to infringe is completely and wholly immaterial to the question of infringement of an earlier patent.

> "Defendant's device is manufactured under patent No. 765,406, issued July 19, 1904, to J. H. Wagenhorst, and the court below gave to this fact some force in reaching his conclusion that the device did not infringe. We think that the granting of the later patent and defendant's conformity thereto are not of importance in this case on the infringement issue. There are expressions in some reported cases implying that by the later patent the government has granted a right to make and use the article so patented, and that such grant is inconsistent with any construction of the earlier patent which would forbid the manufacture of the later structure. Such

implication rests on a fundamental error. A patent is not the grant of a right to make or use or sell. It does not, directly or indirectly, imply any such right. It grants only the right to exclude others. The supposition that a right to make is created by the patent grant is obviously inconsistent with the established distinctions between generic and specific patents, and with the well-known fact that a very considerable portion of the patents granted are in a field covered by a former relatively generic or basic patent, are tributary to such earlier patent, and cannot be practiced unless by license thereunder.

Another reason sometimes advanced for supposing that the structure of the second does not infringe the claim of the first patent is that the Patent Office has declared that a patentable difference exists. The premise is sound, but not the conclusion. In examining the second application, the Patent Office has no concern with the scope of the claim of the first, and does not and must not pay any attention thereto. It is concerned only with the early disclosure by the specification and drawings. Patentable difference does not of itself tend to negative infringement. It may just as well be based upon infringement, plus improvement; and improvement may lie in addition, simplification, or variance. This is well illustrated by this Wagenhorst patent. The drawings show, and the specifications describe a structure generally similar to Herman's, but each one of the 10 claims is found to be confined to some modification and supposed improvement added to the underlying combinations of the earlier art."

CONCLUSION.

The latch used by the petitioner is identical in the sense of the patent law with that shown, described and claimed in patent No. 1,385,102 in suit. It has the same

elements. Specifically there are no differences in the elements in the combination. The first keeper engaging arm and the under cam edge of the keeper head are physically the same and located at the same places in both latches. The second arm and the cam cooperating therewith are physically the same but have been merely transposed or reversed in position in petitioner's latch. When the door is closed with the latch lever in vertical position, with the latch used by petitioner on the door, the transposed cam on the lever and the transposed second arm on the keeper come together and cooperate to swing the lever about its pivot exactly as the second arm on the lever and the inclined or oblique cam at the upper outer side of the keeper head cooperate in the patent in suit. This change in form, or this attempt to avoid literal wording of claims, is exceedingly common on the part of infringers. Claims 1, 2, 3, 4 and 7 of the patent No. 1,385,102, construed and interpreted in the light of the disclosure on which they are drafted, clearly comprehend, it is submitted, the construction of latch used by the petitioner for such latch used by the petitioner is absolutely identical in the sense of the patent law with the latch patented to respondents and differs therefrom physically only in a mere reversal of cooperating parts which cooperate in identically the same manner in both latches. Other than this mere reversal the two latches are physically identical in every respect.

In fact, it is believed that the present case is one like that decided by Judge Hand in Anchor Cap & Closure Corp., and that the exact scope of the claims 1, 2, 3, 4 and 7 over the prior art and prior structures in the latch art need not be considered as such question of scope be-

comes merely academic by reason of the faithful reproduction of the latch of the patent in suit by the petitioner, except for the mere reversal in parts.

Very respectfully,

ALEXANDER F. WINTERS AND
BASIL R. CRAMPTON.

By Frank E. Liverance, Jr.,
John Boyle, Jr.,
Counsel for Respondents.

Grand Rapids, Michigan.
October 31, 1928.

FILE COPY

IN THE

UNITED STATES SUPREME COURT

October Term, 1928.

No. 128.

SANITARY REFRIGERATOR COMPANY,
Petitioner-Defendant,

v.

ALEXANDER F. WINTERS and BASIL R. CRAMPTON,
Respondents-Plaintiffs.

WRIT OF CERTIORARI TO THE U. S. CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

No. 547.

ALEXANDER F. WINTERS and BASIL R. CRAMPTON,
Petitioners-Plaintiffs,

v.

DENT HARDWARE COMPANY,
Respondents.

WRIT OF CERTIORARI TO THE U. S. CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT.

CONSOLIDATED BRIEF AND ARGUMENT FOR SANITARY REFRIGERATOR CO., PETITIONER IN NO 128, AND DENT HARDWARE COMPANY, RESPONDENT IN NO. 547.

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U. F. HUNTZINGER CO., Appellate Printers, Camden, N. J.

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IN THE

SUPREME COURT OF THE UNITED STATES.

October Term, 1928.

No. 128.

SANITARY REFRIGERATOR COMPANY,
Petitioner-Defendant,

v.

ALEXANDER F. WINTERS and BASIL R. CRAMPTON,
Respondents-Plaintiffs.

WRIT OF CERTIORARI TO THE U. S. CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

No. 547.

ALEXANDER F. WINTERS and BASIL R. CRAMPTON,
Petitioners-Plaintiffs,

v.

DENT HARDWARE COMPANY,
Respondents.

WRIT OF CERTIORARI TO THE U. S. CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT.

CONSOLIDATED BRIEF AND ARGUMENT FOR SANITARY REFRIGERATOR CO., PETITIONER IN NO. 128, AND ALSO FOR DENT HARDWARE COMPANY, RESPONDENT IN NO. 547. (DEFENDANTS.)

HISTORY OF THE CASES.

These cases concern the validity and infringement of the Winters and Crampton patent in suit for a door fastener or latch, No. 1,385,102, issued July 19, 1921. (Sanitary R. p. 69.) Defendant's (Sanitary and Dent) device is constructed under Schrader patent No. 1,575,647. (Sanitary R. p. 125.)

THE SANITARY CASE NO. 128.

The Sanitary suit originated in the District Court for the Eastern District of Wisconsin, being originally entitled, Winters & Crampton v. Sanitary Refrigerator Co. From an interlocutory decree entered therein by Judge Geiger, holding said Winters and Crampton patent valid and infringed (Sanitary R. p. 61) defendant, Sanitary Co., appealed. The Circuit Court of Appeals for the Seventh Circuit, in an opinion filed Feb. 9, 1928, held Winters' claims 5 and 6 invalid, and claims 1, 2, 3, 4 and 7 valid and infringed by a device constructed under the Schrader patent, *supra*. (Sanitary R. p. 136, 24 Fed. 2nd 15.) Rehearing was denied March 6, 1928. Certiorari was allowed Oct. 15, 1928.

THE DENT CASE NO. 547.

The Dent case originated in the District Court for the Eastern District of Pennsylvania, by a bill filed on March 15, 1927, by the same plaintiffs on the same patent and same issue of infringement as in No. 128, the case being entitled, Winters & Crampton v. Dent Hardware Co. Motion for preliminary injunction made before Judge Dickinson was denied and the case ordered to final hearing. Following the return of proofs, filing of briefs and arguments on both sides, Judge Dickinson, on Aug. 11, 1927, filed an

opinion holding the Winters and Crampton patent not infringed (20 Fed. 2d 671). Winters and Crampton appealed from Judge Dickinson's decree of dismissal to the Circuit Court of Appeals for the Third Circuit, which, after argument, held the case under advisement for nine months, and in its opinion filed Oct. 4, 1928, affirmed the District Court (28 Fed. 2d 583). Winters & Crampton then petitioned for a certiorari, which was allowed December 3, 1928. Following a joint application by both parties to this Court, an order was entered January 2, 1929, directing that both cases be consolidated and argued as one case when No. 547 should be reached.*

A copy of the opinion of the Court of Appeals for the Third Circuit is attached hereto as Exhibit 1. The opinion of Judge Dickinson, in the Eastern District of Pennsylvania, is attached hereto as Exhibit 2. The opinion of the Court of Appeals for the Seventh Circuit is attached hereto as Exhibit 3. The opinion of the District Court of Wisconsin is attached hereto as Exhibit 4.

JURISDICTION.

This Court has taken jurisdiction by reason of conflict of decisions in two Circuit Courts of Appeal, the Circuit Court of Appeals in the Seventh Circuit holding, in 24 Fed. 2d 15, that the Winters and Crampton patent No. 1,385,102 was valid and infringed as to all claims except 5 and 6 which were invalid, while the Circuit Court of Appeals for the Third Circuit held that said patent was of doubtful validity (Dent R. p. 214) and not infringed. Claims 5 and 6 of said patent were held invalid by both Courts. The defendants' (Sanitary and Dent) device in each case was constructed under Schrader patent No. 1,575,647. (Sanitary R. p. 125.)

* No. 128 will be referred to as the Sanitary case; No. 547, as the Dent case; Winters and Crampton, as plaintiffs; the Sanitary Co. and Dent Hardware Co. as defendants; italics and bold face ours.

CONCISE STATEMENT OF THE CASE.

The usual questions in patent cases are here involved, to wit: Are claims 1, 2, 3, 4 and 7 of the Winters & Crampton patent No. 1,385,102 valid, and are they infringed when properly construed by a structure conforming to the Schrader patent No. 1,575,647? The door fasteners in dispute consist of two elements, a stationary keeper, which was old, and a movable latch or lever, also old, and mounted on a door and tripped by the old keeper when the door is slammed shut.

Counsel for Sanitary and Dent in both Courts of Appeal argued that the Winters keeper was old since original claim 7 therefor was rejected by the Patent Office and cancelled. (Sanitary R. p. 52.) The Winters latch lever, comprising merely a handle or lever with two short angular arms at one end, was also old and unpatentable as Winters claims 5 and 6 thereto have been held invalid by both Courts of Appeal (24 Fed. 2d 15 and 28 Fed. 2d 583). How, then, can any exercise of brain power be involved in bringing two admittedly old structures into one assembly or organization, when no new or useful result is attained, merely **the old result** of tripping the lever by the keeper, when the door carrying the lever is slammed shut?

We believe that the opinion of the Circuit Court of Appeals for the Third Circuit (28 Fed. 2d 583), attached hereto as Exhibit 1, is sound and correct, and counsel for Sanitary and Dent is willing to plant his whole case thereon as it would be impossible more clearly to state the facts and the law. We shall, therefore, endeavor to point out what we think is the error in the Seventh Circuit (the Sanitary) case No. 128, in holding the Winters and Crampton, narrow, restricted, secondary patent valid and infringed by the widely different Schrader construction (Sanitary R. p. 125) of defendants in the Sanitary and Dent cases.

SPECIFICATION OF ERRORS.

(SANITARY CASE).

1. The opinion is erroneous in holding that claims 1, 2, 3, 4 and 7 of the Winters & Crampton patent (Sanitary R. p. 72) are infringed by the device constructed under the Schrader patent No. 1,575,647. (Sanitary R. p. 125.)

2. The opinion is erroneous in finding infringement after holding the Winters and Crampton patent to be a narrow, restricted and limited patent, and finding that such narrow, restricted and limited claims are infringed by defendants' device constructed under said Schrader patent No. 1,575,647. (Sanitary R. p. 125.)

3. The Court of Appeals for the Seventh Circuit erred in not holding the Winters and Crampton patent to be lacking in patentable novelty in view of the prior art, as no new function or result whatever is attained by the collocation of an old keeper and an old lever, merely the old function of the keeper tripping the lever when the door is slammed shut.

SUMMARY OF ARGUMENT.

We shall endeavor to make clear:

(A) That the Circuit Court of Appeals for the Third Circuit did not err in giving the Dent case, No. 547, its independent and untrammelled consideration (28 Fed. 2d 583) since the decree in the Sanitary case, No. 128, was not a *final* decree but an *interlocutory* decree. *McGourkey v. Toledo & Ohio Railway,* 146 U. S. 545; *Smith v. Vulcan Iron Works,* 165 U. S. 524; *Australian Co. v. Gormly,* 138 Fed. 92.

(B) That the statement of invention of the Winters & Crampton patent is a totally erroneous and deceptive statement of the prior art; that its file wrapper shows the keeper element to be old, as original claim 7 therefor was rejected and cancelled, while the latch or lever element of Winters & Crampton claims 5 and 6 is also public property, as said claims have been held invalid by both Courts of Appeal.

(C) That the Winters and Crampton patent is invalid in view of the prior Keil, Dent and Charles patents, as its differentiation therefrom in having the top curved edge of its keeper trip the right-angled top arm of the latch lever brings about no new function or result.

(D) That the Winters and Crampton patent is a narrow, limited, restricted, secondary patent, whose claims are limited by the prior art to the precise construction shown.

(E) The claims of the Winters and Crampton patent are further limited by the concluding words, "substantially as described."

(F) That the Sanitary and Dent devices, with their short radius cam constructed under patent No. 1,575,647 (Sanitary R. p. 125), are structurally differentiated from the

Winters & Crampton patent by language approved by the Patent Office, and do not infringe.

(G) That the grant to the Dent Hardware Co. of said patent No. 1,575,647, covering the Sanitary and Dent device (Sanitary R. p. 125) creates a presumption that there was a substantial difference between plaintiffs' and defendant's latch.

(H) That the corresponding parts of the rival latches are not interchangeable, hence there is no infringement.

(I) That in a doubtful case, the fact that a patented article has gone into use is not conclusive of its utility, much less of its patentable novelty.

POINT A.

AS TO RES JUDICATA OR JUDGMENT BY ESTOPPEL.

The Circuit Court of Appeals for the Third Circuit did not err in refusing to follow the decision of the Circuit Court of Appeals of the Seventh Circuit (24 Fed. 2d 15), for the reason that the decree therein in that Sanitary case is admittedly an interlocutory decree, and so entitled. (Sanitary R. p. 61.) It was not a final decree.

That the decree of a District Court sustaining a patent, declaring infringement, and sending the matter to a Master to take and state an account of profits and damages, is *interlocutory* and not *final*, is settled by this Court in *McGourkey v. Toledo & Ohio Railway*, 146 U. S. 545, 13 Sup. Ct. 172, 36 L. Ed. 1079, where it is said:

> "It is equally well settled that a decree * * * or in equity establishing the validity of a patent, and refer-

ring the case to a Master to compute and report the damages, is *interlocutory* merely."

And also in *Smith v. Vulcan Iron Works*, 165 U. S. 524, 17 Sup. Ct. 410, 41 L. Ed. 810, this Court said:

"But under the judicial system of the United States, from the beginning until the passage of the Act of 1891, establishing Circuit Courts of Appeals, appeals from the Circuit Courts of the United States, in equity or in admiralty, like writs of error at common law, would lie only after final judgment or decree; and an order or decree in a patent cause, whether upon preliminary application or upon final hearing, granting an injunction, and referring the cause to a Master for an account of profits and damages, was *interlocutory* only, and *not final*, and, therefore, not reviewable on appeal before the final decree in the cause."

There can be no *final* decree in that Sanitary case, until after the following steps, which under the regular procedure, will consist in taking evidence before the already appointed Master in Chancery; the filing of his draft report, and in exceptions to his draft report; and in his final report; and in exceptions to his final report; and in bringing on that final report for argument, on those exceptions before the District Court; and in reaching and formulating the decision of that Court on those exceptions; and in an appeal to the Circuit Court of Appeals, from whatever decree is rendered in the District Court in pursuance of the Master's report; and in arguing that appeal in that tribunal; and in a decision of that appeal by that tribunal. Then and not until then, can a *final* decree be entered.

It is too well settled to require the citation of authorities that only a *final* decree can operate as *res judicata*. The subject is fully discussed in *Australian Co. v. Gormly*, 138 Fed. 92, which is on all fours with the instant case, see bottom of page 99:

"It is insisted by the defendant here that the decree rendered in the former suit by this complainant against Wright's Health Underwear Company is interlocutory,

merely and therefore not *res adjudicata* or an estoppel, even if the Court finds that the defendant here assumed the defense of that action to such an extent that he had the right to control it, offer evidence, examine and cross-examine witnesses, and take an appeal. This Court is of the opinion, in view of the fact that the defendant here does not deny that he assumed the defense of the prior action to such an extent that he controlled it, and that it is established that Gormly did assume the defense of that action, and did have the right to control it and employ counsel therein, and examine and cross-examine witnesses, and take an appeal. This being so, we come to the question whether the decree granting an injunction and an accounting made by the Circuit Court, and appealed from and affirmed by the Circuit Court of Appeals, is *interlocutory* merely, or *final,* on the question of the validity of the patent in question, and the question of infringement by the making and selling or using of the alleged infringing article; that is, is it a final decree in the sense that it is either an estoppel or strictly *res adjudicata* as to the defendant, Gormly?"

On pages 100 to 103, the Court discusses the authorities and the distinctions between an *interlocutory* and a *final* decree, and at the bottom of page 103, holds that since the matter of the action in the other case was pending before a Master, that the prior decision referred to or the judgment following the same was *interlocutory* merely, not *final,* and that it was proper to proceed to decide the Gormly case on its merits. Notwithstanding the Court of Appeals had held the patent there involved valid, Judge Ray then proceeded to decide that Gormly case on its merits, and ordered the dismissal of the bill therein. Perhaps the best answer to Winters' and Crampton's assertion that a final decree or its equivalent was entered in the Seventh Circuit, is in the fact that these cases are here for final review, and no final decree can be entered in the Seventh Circuit case until, and in pursuance to, the mandate of this Court. It is, therefore, submitted that the four Federal Judges in

the Third Circuit did not err in considering and deciding the Dent case (20 Fed. 2d 671 and 28 Fed. 2d 583), nor did they err in their conclusions as to non-infringement.

POINT B.

THE PATENT IN SUIT AND THE ANTIQUITY OF ITS KEEPER AND LEVER.

The first column of the patent in suit, No. 1,385,102 (Sanitary R. p. 71), relating to the Condit patent, which purports to be a recital of the prior art, is probably the most misleading and deceptive "statement of invention" that ever appeared in any patent. One reading this matter would naturally believe that the so-called Condit latch was the only prior art refrigerator latch that had ever been made and that Winters and Crampton were the first or only ones to obviate the alleged disadvantages therein.

Lines 37 to 45 of the patent in suit, No. 1,385,102, say:

> "In the present invention, it is a primary object and purpose to provide a latch which may be pivotally connected to the door and which is automatically operated to engage with a retaining member or keeper fixed on the door casing when the door is closed irrespective of the vertical or horizontal position of the latch lever, working as well in the one case as the other." (Sanitary R. p. 71.)

Lines 54 to 60 (Sanitary R. p. 72) of the patent in suit, say:

> "In any case, the latch lever engages with the latch keeper when the door is closed irrespective of the position of the lever. This is a feature of merit in the invention, and one of particular value from a practical standpoint when the latch is used on refrigerators."

The natural inference from the foregoing would be that Winters and Crampton were the first to approach and solve the problem, of a refrigerator latch, which would automati-

cally lock when the door was slammed, no matter whether the latch lever stood horizontal or vertical, whereas the truth is that this structure was old, and had been well known in the art for the last quarter of a century, and millions of automatic, springless latches of this general construction had been made and sold by defendant (Dent) before plaintiffs had ever built a latch of any character. (Dent R. bottom of p. 20 and middle of p. 22.)

In various places in their brief, as page 6, they say the slamming of the door automatically wedges the end of the latch lever with the bottom notch of the keeper. From their patent, which is the highest source of information, it is implied that the action is not wholly automatic, since after the door is slammed shut, a further manual operation or downward pull on the handle is necessary to effect locking.

> "It is apparent that by giving the end of the handle 11 a downward movement the door will be wedged tightly shut as the arm 9 moves upwardly against the incline 20." (Sanitary R. p. 72, 27 to 30.)

In the Courts below, plaintiffs had much to say about their latch lever swinging parallel to the door, but this feature is not even mentioned in the record or specification of the patent in suit, nor is there the slightest advantage or utility shown therefor. This feature is shown in probably half the patents in this record, and has been on the majority of barn doors for probably the last century. The Winters and Crampton fastener is merely an old keeper having a triangular nose and a bottom notch, plus an equally old lever pivoted to the door and comprising a handle and two arms on the opposite end, yet plaintiffs have taken many pages of their brief to describe this simple contrivance.

WINTERS AND CRAMPTON'S FILE WRAPPER—THE KEEPER.

Plaintiff's file wrapper (Sanitary R. p. 52) shows that Winters and Crampton's original claim 7 to their keeper, which reads as follows:

"7. A keeper for latches comprising a base, a post projecting outwardly from the base at the upper portion thereof, and a head to the post depending below the same and being substantially triangular in outline, having an upper and a lower outer side coming substantially to a point and an inner upwardly and inwardly inclined side, substantially as described,"

was rejected by the Patent Examiner on April 15, 1921, the Patent Office action reading as follows (Sanitary R. p. 55):

"Claim 7 does not patentably distinguish over the following patents:
Keil, 554,448, Feb. 11, 1896 (202-241);
Ward, 1,250,736, Dec. 18, 1917 (292-242),
and is rejected. The remaining claims appear allowable.

In amending, see the following art:
Dent, 670,506, Mar. 26, 1901 (292-241);
Hadka, 743,716, Nov. 10, 1903 (and),
Blye, 1,238,876, Sept. 4, 1917 (292-242).

Examined Div. 20."

This rejected claim was cancelled. Consequently there was no novelty whatever in Winters and Crampton's keeper as is shown by a mere inspection of the references cited by the Patent Examiner as Keil (Sanitary R. p. 78) and Ward. (Sanitary R. p. 112.)

PLAINTIFF'S LATCH LEVER.

The Winters and Crampton latch lever (Sanitary R. p. 70) is merely a handle having a pivot or fulcrum and a pair of right-angled arms 9 and 12 near the pivot at the end opposite the handle. This contrivance was attempted to be covered by Winters and Crampton's claims 5 and 6. (Sanitary R. p. 73.) As these two claims have been held invalid by both Courts of Appeal, the Winters and Crampton lever structure is now public property.

SUMMARY AS TO PLAINTIFFS' KEEPER AND LEVER.

It being clear from the foregoing that Winters and Crampton's keeper 16, 17, 18 and 19 and lever 11 (Sanitary R. p. 70) are public property, the next inquiry is what, if anything, did the plaintiffs invent? They collocated the old latch lever on the door so that the top right-angled arm 12 of the lever, when the latter happened to stand vertical, **rides over the top of the curved edge 18 of the keeper,** which causes their latch lever 11 to be kicked or tripped when the door is slammed, so that the other arm 9 can engage the under recess 20 of the keeper. **This, however, brings about no new function or result.** The Winters and Crampton keeper merely functions to trip the latch or lever just as occurs in all of the fasteners in this ancient art, which are composed of a latch lever and a keeper to trip it, in one way or another, when the door is slammed shut.

POINT C.

INVALIDITY OF THE WINTERS AND CRAMPTON PATENT IN VIEW OF KEIL, DENT AND CHARLES PATENTS.

KEIL PATENT, NO. 554,448, FEBRUARY 11, 1896.

(Sanitary R. p. 78.)

Keil shows a springless, automatic latch lever 7 having arms 4 and 5, which lever will automatically lock when the door is slammed, when said lever stands in a horizontal, vertical or intermediate position (Sanitary R. p. 139), as clearly appears by the operation of the physical specimen of the Keil fastener. Keil's statement of invention (Sanitary R. p. 79, lines 9 to 24, page 1 of Keil patent) is just as readable on Winters and Crampton's contrivance as on Keil.

"This invention relates to that class of door clamps and openers in which a lever having suitable studs to engage a keeper is utilized to force a door tightly to its seat when moved in one direction and to start or 'pry' the door open when moved in the other direction, this type of invention being particularly adapted for refrigerator or other doors which require an absolutely tight closure.

The object of my invention is to produce a simple device of the type mentioned, one which is certain in operation, of small cost, and which will both clamp and start the door in a direct horizontal plane without tendency to move the door in any direction other than that for which its hinges provide."

Keil's keeper 8 is mounted on the door casing and the latch lever 7 is mounted on the door just as in plaintiffs' Winters and Crampton's patent. If any broad construction is attempted to be given to said plaintiffs' patent, as being for a springless, automatic latch lever which will trip and lock in a vertical or horizontal position, plus a co-acting keeper, manifestly such construction is present in the Keil patent, which has been public property ever since the year 1913.

In the plate facing this page, we have reproduced the Keil patent drawings with the latch lever 7 colored red, the arms 4 and 5 colored green, and the keeper 8 yellow. Keil's yellow keeper 8 is mounted on the door casing and the red latch lever 7 is pivotally mounted on the door between its ends precisely as in plaintiffs' Winters and Crampton patent. One end of Keil's lever is formed into an operating handle and the other into a keeper engaging green arm 5. Keil has another green arm 4 projecting from the handle portion of the lever a short distance from its pivot. Keil's keeper has an inclined wall 9 for engagement with the respective green arms 5 and 4 when the lever is in horizontal, vertical or intermediate positions, respectively, when the door is closed, automatically to operate the lever, so that the arm 5 will engage under the keeper, when the door is

(No Model.)

H. F. KEIL.

LATCH.

No. 554,448. Patented Feb. 11, 1896.

Fig. 1.

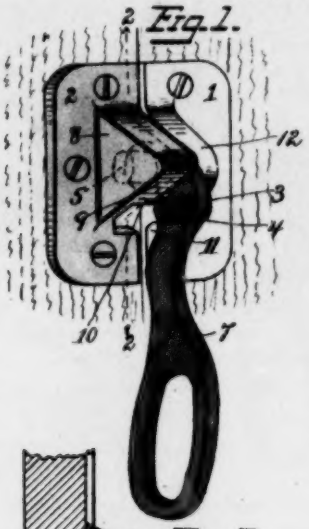


Fig. 6.

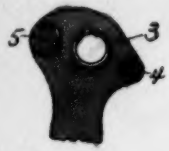


Fig. 5.

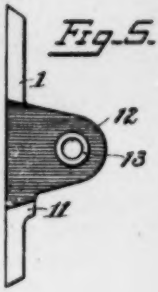


Fig. 2.

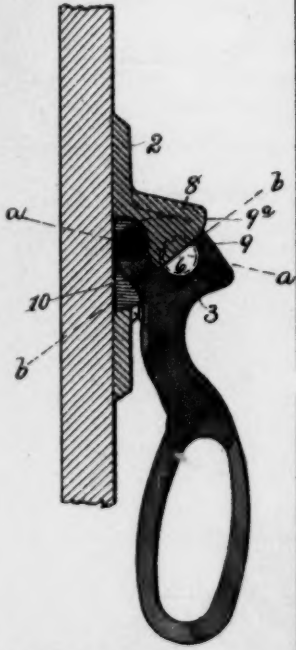


Fig. 3.

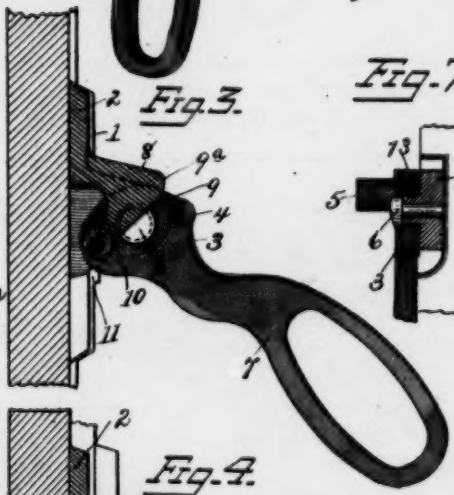
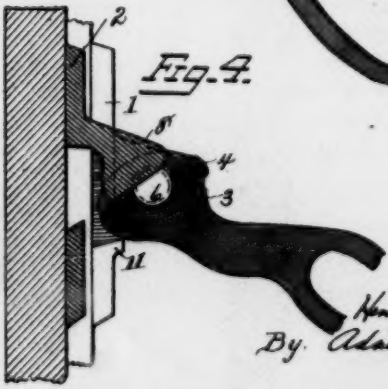


Fig. 7.



Fig. 4.



WITNESSES:

Albert Popking.

INVENTOR.

Henry F. Keil

By Adam B. Schatz

Attorney.

H. F. KEIL.
LATCH.

No. 554,448. PATENTED FEB. 11, 1896.

Fig. 2.



Fig. 3.

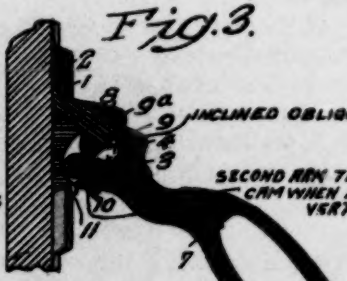
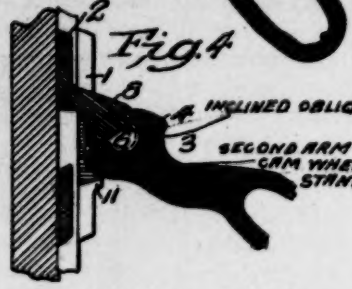
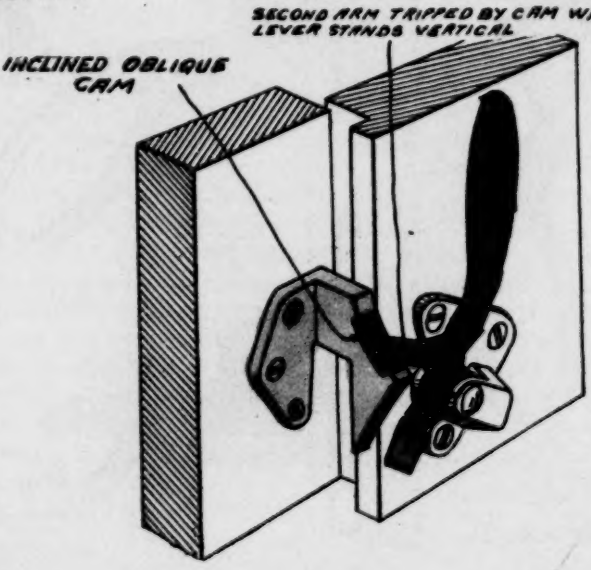


Fig. 4.



PLAINTIFFS

WINTERS & CRAMPTON LATCH.



entirely closed. The Keil fastener enjoyed a wide sale and is on the market today. (Dent. R. p. 21.)

The elements in Winters and Crampton's claim 3 arranged in tabulated form are as follows (Sanitary R. p. 72):

(a) a door,
(b) a casing,
(c) a keeper attached to the casing,
(d) a latch lever pivotally connected to the door,
(e) means on the keeper, and,
(f) means on the latch lever to engage with the keeper on the outer sides thereof to swing the lever into engagement with the keeper at the inner side thereof when the door is closed with the lever occupying either a vertical or a horizontal position, substantially as described.

From the comparative drawing facing this page showing Keil at the top and plaintiff below, it will be seen that the above claim is just as readable on Keil as on Winters and Crampton.

Plaintiffs' claim 7 reads as follows:

> "In combination, a door and a casing therefor, a keeper attached to the casing, a latch lever pivotally mounted on the door between its ends, one end of the lever being formed into an operating handle and the other into a keeper engaging arm, a second arm projecting from the handle portion of the lever a short distance from its pivot and at an angle to the first arm, said keeper being formed at its outer sides for engagement with the respective arms when the lever is in horizontal and vertical positions, respectively, as the door is closed, to automatically operate the lever so that it will engage under the keeper when the door is entirely closed, substantially as described." (Sanitary R. p. 73.)

If this claim is construed as plaintiffs' demand, we see no theory on which it can be saved in view of Keil. When Keil's red lever 7 is standing horizontal and the door carry-

ing the lever is slammed shut, the pin 4 will engage the upper portion of the inclined wall 9 which will throw the lever 7 into the position seen in Fig. 4, then into the position seen in Fig. 3, and then into the locked position seen in Keil's Fig. 2. An inspection and operation of the specimen of the Keil structure clearly shows that the Keil lever will automatically lock when the door is slammed, no matter whether the lever is standing horizontal or vertical or in any intermediate positions. The main thing in plaintiffs' claim 7 which is not present in Keil is the limitation of plaintiffs' second or top arm being at an angle to the first arm. Keil's arms 4 and 5 are parallel, whereas plaintiffs' arms 12 and 9 are at right angles to each other, but what difference or improved function or result is attained by plaintiffs' right-angled arm contrivance over Keil's parallel arm arrangement? **The plaintiffs' patent is silent and so is the record.** If plaintiffs' claim 7 is read so as to sweep within its ambit defendant's (Sanitary and Dent) patented device, and without restricting it to **the upper arm 12 riding over the curved top face of the plaintiffs' keeper 18,** which Dent and Sanitary do not do, then plaintiffs' claim 7 is manifestly invalid in view of Keil.

It is well settled that to readjust or readapt old elements, as the terminal arms of these levers, or to substitute for one old element in a combination another old element which may be better suited for the purpose, is not invention, under the familiar decisions of this Court. It is impossible to reach any other conclusion, when we find this Court in *Brown v. Piper,* 91 U. S. 37, holding the fish-preserving process anticipated by a "corpse preserver," as well as by the ordinary ice cream freezer; and in *Crescent Brewing Co. v. Gottfried,* U. S. 158, holding the patented process and apparatus for pitching the interior of beer kegs anticipated by the ancient "pewterer's blast" and in *Peters v. Mfg. Co.,* 129 U. S. 350, holding the patented contrivance for applying metallic moldings to buggy dashes anticipated by prior devices for applying metal backs to combs; and in *Aaron v. Railway Co.,* 132 U. S. 84, holding the devices for opening and closing the gates of elevated railway cars anticipated by the transom lifters of the prior

art; and in *Royer v. Roth,* 132 U. S. 201, holding a rawhide fulling machine anticipated by a washing machine; and in *Howe Machine Co. v. Needle Co.,* 134 U. S. 388, holding the machine for turning sewing machine needles anticipated by the prior machine for turning wooden skewers and spindles; and in *St. German v. Brunswick,* 135 U. S. 277, holding the revolving billiard cue rack anticipated by revolving dining tables and bottle casters; and in *Bussell Trimmer Co. v. Stevens,* 137 U. S. 423, holding the rotary cutter for trimming the edges of boot and shoe soles anticipated by the prior cutter for cutting the teeth of metal gear-wheels; and in *Knapp v. Morss,* 150 U. S. 221, holding an expansible dress form anticipated by a common umbrella. There is not a line in this record showing the slightest advantage or utility being attained by the use of the plaintiffs' right-angled arms 12 and 9 in lieu of Keil's parallel arms 4 and 5, since the ultimate function of the arms in both the Keil and Winters & Crampton structures is identical, to wit: to effect a tripping of the latch lever by the co-action of the arms with the keeper, no matter whether said latch lever stands horizontal or vertical. *Atlantic Works v. Brady,* 107 U. S. 192.

The foregoing Winters and Crampton's claims 3 and 7 discussed, *supra,* are typical of the other claims as 1, 2 and 4, which are all of substantially the same scope. Claim 2, in its latter part, is the only one accurately describing the construction, wherein it says that the second arm is "adapted to ride **against the upper outer side of the keeper** when the door is closed with the lever positioned vertically."

But no new function or result is attained by this, merely the ancient act of tripping of the lever when it hits the keeper.

Circuit Judge Davis, a very experienced patent Judge, speaking for the Court of Appeals for the Third Circuit (Dent R. p. 210) accurately stated the analogy between Keil and Winters & Crampton:

> "The keeper in the Keil patent is strikingly similar in both form and function to that of the patent in suit.

In Keil, the keeper has a base attached to the casing by three screws. From this base a post extends downwardly for a distance below the lower edge of the post. The head of the latch is the apex of the triangle. The two sides terminating in the head are practically straight, while those of the patent in question are somewhat curved. From the apex of the keeper when attached to the casing, one of the triangular sides extends upwardly and the other downwardly. The inner or lower side is cut upwardly and somewhat inwardly at a slight angle to the vertical, forming a wedging cam. This meagre description reads equally well on the keeper of either the Keil patent or the patent in suit.

The function of every part of the Keil keeper is practically identical with that of the keeper of the patent in question. One or the other of the arms of the latch lever of the Keil latch slides down on the lower triangular side of the keeper when the door is being closed. Which one of these two arms contacts with this lower side depends upon the position in which the latch lever is when the door is closed. The function performed by the plaintiffs' keeper and the Keil keeper in co-operation with the latch levers is the same function performed by keepers generally in the prior art patents. Only one of the sides of the Keil keeper, however, engages the arms of the latch lever and serves as a cam to direct the lever when the door is closed, but this is due to the design of the arms of the levers and not to difference in principle of operation.

The next question concerns the latch lever. Judge Evans, in construing this patent in the Circuit Court of Appeals for the Seventh Circuit, said that, 'patentable novelty resides in the structural differences of the latches (either in the keeper member or latch member or both).' A pin is run through the lever about one inch from the end which engages the keeper. This serves as a pivot or fulcrum. This latch lever is really a handle having two right-angled arms near the pivot. One is the extension of handle beyond the pivot and

the other is at right angles to it. In operation, one of these two arms 'is engaged with an outer portion of the keeper when the door is moved to closing position to swing the lever from a vertical position to a horizontal and engage the other arm under the keeper, and the other (arm) of which is engaged with a different outer portion of the keeper when the door is moved to closing position and the lever is horizontal to run the lever upwardly toward vertical position or until said upper arm passes under and engages with the keeper to hold the door closed.' These general features and functions of latch levers were old in the art. The lever in the Keil patent has the general features of the plaintiffs' lever. It will lock when the door is closed whether the lever is in a horizontal, vertical or an intermediate position, because of the co-operation of the two arms 4 and 5 of the lever latch with the keeper 'to force the door tightly to' when it is shut. The keeper is mounted on the door casing just as in the patent in suit. The latch lever is pivotally mounted between the ends on the door. One of the ends forms the operating handle and the other contains two arms, one or the other of which engages the cam on the keeper when the door is closed.

The elements common to the devices of Keil and the plaintiffs are: a door, a casing, a keeper attached to the casing, a lever latch pivotally attached to the door, means on the keeper to engage the arms of the latch and means on the latch to engage with the keeper. The two arms of the engaging end of the Keil lever, however, are in the same parallel plane while the two arms on the plaintiffs' lever are at right angles, but both perform the same function, and this difference is one of design and not of principle of operation."

THE DENT FASTENER (PATENT NO. 670,506).

(Sanitary R. p. 84.)

Defendant's early Dent latch, made in millions by the Dent Hardware Co. under the Dent patent of 1901 (Sanitary R. p. 84), possessed the capability of automatically locking when the door was slammed, no matter whether the latch stood in a vertical or horizontal position (Dent R. pp. 20 and 21), as will be seen at a glance from the plate facing this page, the keeper being yellow and the lever red. Fig. 2 of the Dent patent shows the lever f horizontal and ready to be tripped by the keeper. If the handle f stands vertical, the lug g will hit the keeper h, tilt and lock the lever when the door is slammed shut. The Dent Hardware Co. made millions of latches under this early Dent patent which still enjoys a large sale. These fasteners were fool-proof and the latch tripped and locked when the door was slammed in whatever position, horizontal or vertical, the latch lever might be (Dent R. pp. 20 and 22), many years before the plaintiffs' patent in suit had even been thought of. The practical and commercial art of refrigerator latches had been fully developed by the Dent Hardware Co. for several decades prior to the patent in suit. There was, therefore, no problem to be solved by the plaintiffs. Whatever novelty, if any, can be accorded plaintiffs' construction, must be ascribed to the use of the top curved edge 18 of plaintiffs' keeper tripping the right-angled arm 12, on the top of the plaintiffs' latch lever 11 (Dent R. p. 105), when said lever stands vertical and the door is slammed. But no new function is created thereby. The tripping action of the plaintiffs' latch when the latch lever stood horizontal, was precisely the same as in innumerable latches of the prior art such as Keil (Dent R. p. 124), or Ward. (Dent R. p. 198.)

No. 670,506. Patented Mar. 26, 1901.

H. H. DENT.

LATCH.

(Application filed Nov. 28, 1900.)

(No Model.)

Fig. 1.

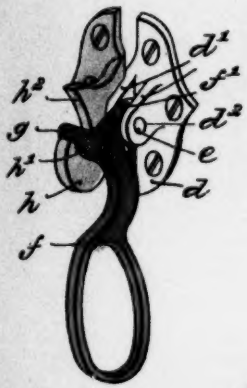


Fig. 2.

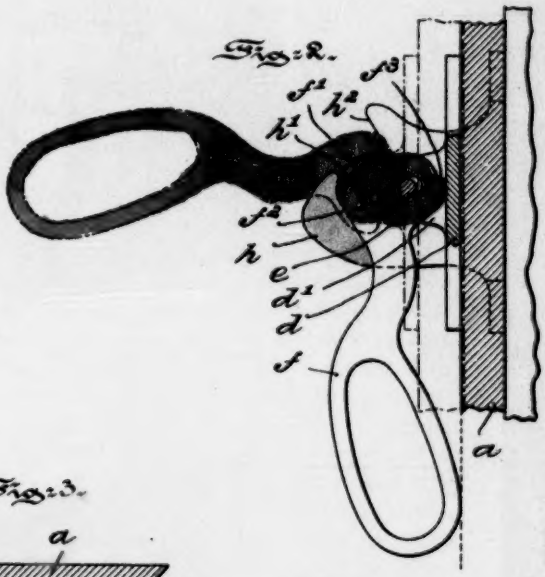


Fig. 3.

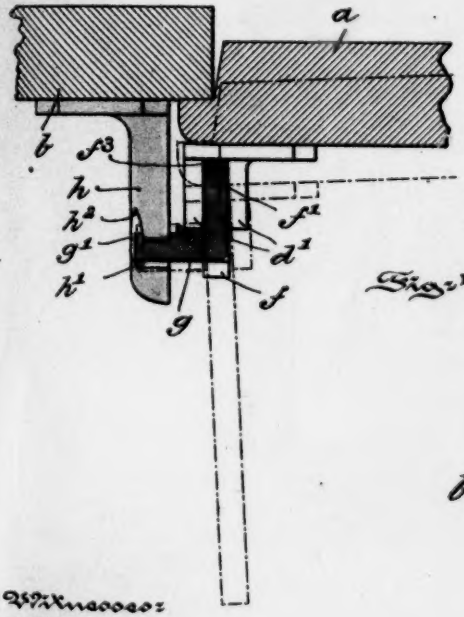
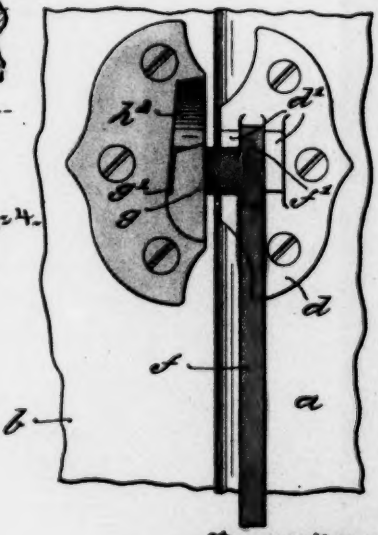


Fig. 4.



Witnesses:
Wilhelm Vogt
Thomas M. Smith.

Inventor:
Henry H. Dent
by J. Walter Taylor

No. 702,185. Patented June 10, 1902.

A. CHARLES.

LATCH.

(Application filed Jan. 26, 1901.)

(No Model.) 2 Sheets—Sheet 2

Fig. 5.

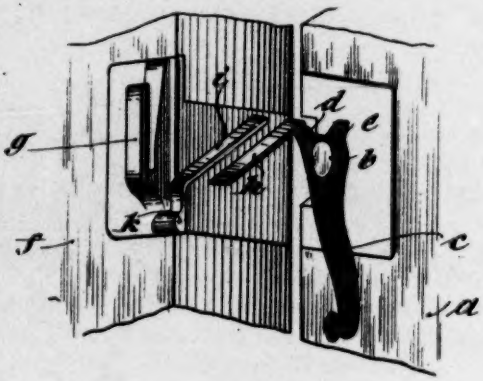


Fig. 6.

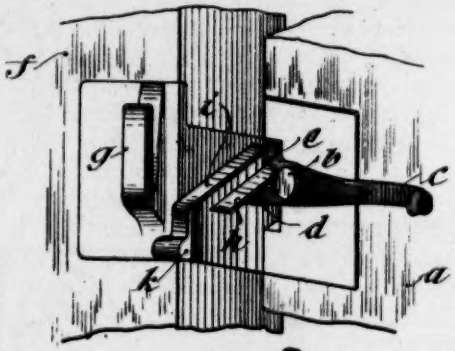
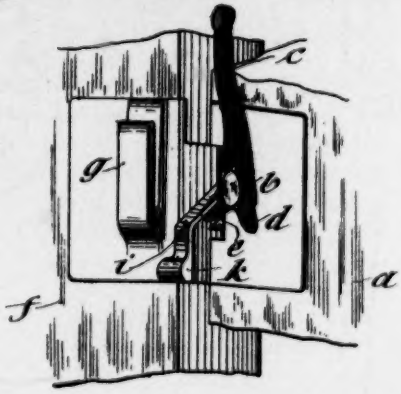


Fig. 7.



Witnesses
Thomas Kirkpatrick
H. van Heusen Brinckerhoff

Inventor
Antoine Charles
by Alexander & Dowell
Attorneys

CHARLES PATENT NO. 702,185.

(Sanitary R. p. 87.)

The Charles patent No. 702,185 shows a structure wherein the keeper or "latch catch" is on the door and the latch pivoted to the door casing, the closing of the door tripping the latch.

Charles, whether considered from a mechanical or patent point of view, is a full equivalent of plaintiffs' structure in the Winters and Crampton patent in suit, as will be seen from the full-sized exhibit of the Charles patent and also from Figs. 5 and 6 of the same, facing this page, wherein the latch lever is colored red. The latch member c of the Charles fastener is provided with a handle portion adapted to stand vertical as seen in Fig. 5 or to stand horizontal as seen in Fig. 6 and to trip with equal facility from either position. The Charles lever is provided with two arms e and d, one extending beyond the handle and pivot and the other extending at substantially a right angle thereto. Practically all Winters and Crampton have done over Charles is to reverse the parts, *i. e.*, pivot the latch lever to the door and put the keeper on the door jamb or casing. A mere reversal of parts is not invention.

Of the Charles patent, the Court of Appeals for the Third Circuit said (Dent R. pp. 212 and 213):

> "The Charles patent, No. 702,185, issued June 10, 1902, shows a device having a latch lever corresponding in its essential features with the plaintiffs'. It has a handle portion which may stand in a horizontal, vertical or intermediate position. There are two arms on the other end, one extending beyond the pivot or fulcrum and the other substantially at right angles to it. The function of these arms, co-acting with the keeper is to fasten the door when it is shut and to hold it in a closed position. This latch considered as a design structure is somewhat different from the plaintiffs', but functionally both are substantially the same.
>
> The function of the arms generally is to trip, or

give a kick to the latch lever by the co-action of the arms with the keeper when the door is closed. The object of all these tripping devices, which are numerous and old in the art, is to fasten the door and hold it in a closed position regardless of the position of the lever when the closing operation begins."

The construction and function of the latch levers of Keil and Charles and their analogy to Winters and Crampton will be apparent from the plate facing this page. The defendant's lever, at the bottom of said plate, is manifestly quite different from those above it.

Under the state of the art and the facts relating to fasteners prior to the Winters & Crampton patent, the claims in question are lacking in patentable quality and are not infringed. Among the almost innumerable pertinent decisions of this Court are the following in which letters patent were held void for anticipation and want of novelty:

(Corded fabric.) *Smith v. Nichols,* 21 Wallace 112;

(Return flue steam boiler for straw burning engine.) *Heald v. Rice,* 104 U. S. 737, 754, 755;

(Fuel magazine for fireplace heater.) *Thatcher Heating Co. v. Burtis,* 121 U. S. 286, 294, 295;

(Device for operating street car door.) *Stephenson v. Ry. Co.,* 114 U. S. 149, 156;

(Ageing wine by steam in pipes.) *Dreyfus v. Searle,* 124 U. S. 60, 63;

(Railway frogs for switches.) *Weir v. Morden,* 125 U. S. 98, 108;

(Grain car doors.) *Watson v. Cincinnati, Indianapolis, etc. Ry. Co.,* 132 U. S. 161, 167;

(Improvement in shoes.) *Burt v. Evory,* 133 U. S. 349, 358;

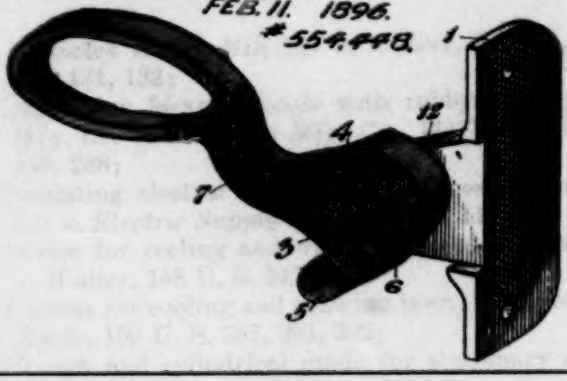
(Corsets.) *Florsheim v. Schilling,* 137 U. S. 64, 76, 77;

(Grating for prison doors.) *Fond du Lac County v. May,* 137, U. S. 395, 406, 407;

(Substitution of belts and pulleys in place of shafts and cog gears for grinding rolls.) *Con-*

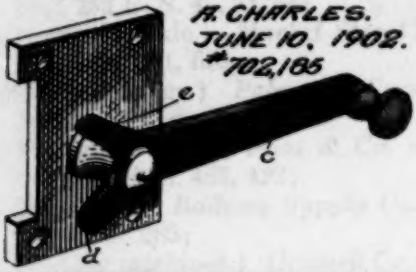
LEVER OF PATENT TO
H. F. NEIL.
FEB. 11. 1896.
554,448.

(SANITARY R.p. 78.)



LEVER OF PATENT TO
H. CHARLES.
JUNE 10. 1902.
702,185

(SANITARY R.p. 88.)



LEVER OF PATENT TO
WINTERS & CRAMPTON.
JULY. 19. 1921.
1,385,102.

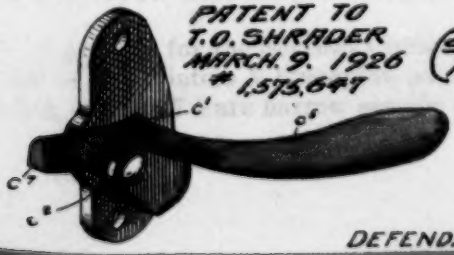
(SANITARY R.p. 70.)



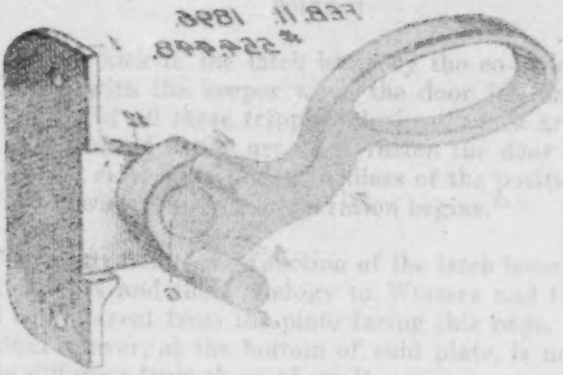
PLAINTIFFS

LEVER OF
PATENT TO
T. O. SHRADER
MARCH. 9. 1926
1,575,647

(SANITARY R.p. 125)



DEFENDANT









solidated Roller Mill Co. v. Walker, 138 U. S. 124, 131, 132;
(Cushioning bicycle pedals with rubber.) *Pope Mfg. Co. v. Gormully Mfg. Co.,* 144 U. S. 238, 247, 248;
(Insulating electric conductors.) *Ansonia Brass Co. v. Electric Supply Co.,* 144 U. S. 11, 17-19;
(Device for reeling and winding thread.) *Grant v. Walter,* 148 U. S. 547, 553;
(Process for cooling and drawing beer.) *Magin v. Karle,* 150 U. S. 387, 391, 392;
(Trough and cylindrical guide for stationary engine rods and cross-heads.) *Wright v. Yuengling,* 155 U. S. 47, 53, 54;
(Oil cup for axle.) *Market Street Ry. v. Rowley,* 155 U. S. 621, 629;
(Sewer gratings.) *Palmer v. Corning,* 156 U. S. 342, 343, 344;
(Windmill.) *Mast, Foos & Co. v. Stover Mfg. Co.,* 177 U. S. 485, 492;
(Tie plates.) *Railway Supply Co. v. Elyria Co.,* 244 U. S. 285;
(Washing machines.) *Grinnell Co. v. Johnson Co.,* 247, U. S. 426;
(Hair cloth mat.) *Werk v. Parker,* 249 U. S. 130;
(Tire machine.) *Thropp's Sons v. Seiberling,* 264 U. S. 320;
(Spot welder.) *Thompson Spot Welder Co. v. Ford Co.,* 265 U. S. 445.

POINT D.

THE WINTERS & CRAMPTON PATENT IS A NARROW, LIMITED, RESTRICTED, SECONDARY PATENT, WHOSE CLAIMS ARE LIMITED TO THE PRECISE CONSTRUCTION SHOWN, IF VALID AT ALL.

The Court of Appeals for the Seventh Circuit (Sanitary
136) said of the Winters & Crampton patent in suit,
laims, 1, 2, 3, 4 and 7 "are narrow specific claims."

"No difficulty would be experienced in finding infringement if the patent were a pioneer or was one covering such an improvement as entitled it to a broad range of equivalency."

"It is an extremely narrow one as a reading of the claims at once discloses. Moreover, the record shows a prior art loaded with latches possessing some of the features of appellee's latch."

"The prior art as disclosed by the Keil patent No. 564,448, the Dent patent No. 67,506, and Charles patent No. 702,185, the Schrader patents Nos. 1,117,709, and 1,170,685, the Ward patent No. 1,250,736, all refute the contention of asserted novelty, in the location of the keeper upon the door jamb and the lever upon the door or in providing for the automatic closing of the door without regard to the position of the lever. It may be true that in some of these disclosures because of the law of gravity the lever invariably takes out one position.

In the Dent patent the keeper was attached to the casing while the member carrying the latch lever was attached to the door. In the Charles latch the keeper was on the door while the other member was on the casing. The Keil latch had its keeper on the casing and the latch member on the door. Each structure, examples of which are in evidence, works automatically when the door is slammed shut whether the latch lever is in a horizontal or a vertical position."

* * * * * * * *

"It follows, therefore, that a patentable novelty, if any exists, is restricted to the particular structure disclosed."

* * * * * * * *

"But it is this narrow field and nothing more which the inventor possessed when he secured his patent."

Circuit Judge Davis speaking for the Court of Appeals in the Third Circuit said of these Winters & Crampton's claims 1, 2, 3, 4 and 7:

"We have grave doubt as to the validity of the other claims, but if they are valid, their scope is clearly confined to the structural design disclosed." (Dent R. p. 214.)

It clearly appears from the foregoing that the Winters & Crampton patent in suit is not a primary patent. It is a narrow, restricted, limited, secondary patent, if it can be saved at all, and the Court of Appeals for the Seventh Circuit seems to have wandered afar from and entirely disregarded the familiar rules anent primary and secondary patents, which have been laid down by this Court in the following leading cases which we have collected not for purposes of instruction but so that the Court can conveniently refer to them if it so desires.

McCormick v. Talcott, 20 Howard 405, 1857;
Burr v. Duryee, 1 Wall. 531;
Railway Co. v. Sayles, 97 U. S. 556, 1878;
Morley Machine Co. v. Lancaster, 129 U. S. 273, 1889;
Pope Mfg. Co. v. Gormully Mfg. Co., 144 U. S. 242, 1892;
Sessions v. Romadka, 145 U. S. 45, 1892;
Knapp v. Morss, 150 U. S. 230, 1893;
Miller v. Eagle Co., 145 U. S. 204, 1894;
Duff v. Pump Co., 107 U. S. 639, 1882;
Boyd v. Janesville Hay Tool Co., 158 U. S. 267, 1895;
Dashiell v. Grosvenor, 162 U. S. 432, 1896;
Westinghouse v. Boyden, 170 U. S. 537;
Kokomo Fence Machine Co. v. Kitselman, 189 U. S. 1, 1903;
Cimiotti Unhairing Co. v. American Fur Refining Co., 198 U. S. 399, 1905;
Railroad Supply Co. v. Elyria Iron & Steel Co., 244 U. S. 285;
Grinnell Washing Machine Co. v. Johnson Co., 247 U. S. 426;
Werk v. Parker, 249 U. S. 130;

Bone v. Marion County, 251 U. S. 134;
Biedler v. U. S., 253 U. S. 447;
Berlin Co. v. P. & G. Co., 254 U. S. 156;
N. Y. Scaffolding Co. v. Liebel Co., 254 U. S. 24;
Weber Co. v. E. H. F. Electric Co., 256 U. S. 668;
Vandenburg v. Truscon, 261 U. S. 6;
Thropp's Sons v. Seiberling, 264 U. S. 320;
Thompson Spot Welder Co. v. Ford Co., 265 U. S. 445;
Concrete Co. v. Gomery, 269 U. S. 177;
Stilz v. U. S., 269 U. S. 144;
I. T. S. Rubber Co. v. Essex Rubber Co., 272 U. S. 429.

In *McCormick v. Talcott,* 20 Howard 405, 1857, which is usually regarded as the first of these great cases, the divider of Manny was held not to infringe the divider claim of McCormick, because the prior art devices had contained dividers which performed substantially the same function as McCormick's divider and therefore narrowed the McCormick rights enough to negative the charge of infringement.

In *Burr v. Duryee* (1 Wallace 531), Mr. Justice Grier said:

> "That two machines produce the same effect, will not justify the assertion that they are substantially the same, or that the devices used by one are therefore, mere equivalents for those of the other. * * * In this case we have an attempt to convert an improved machine into an abstraction, a principle or mode of operation, or a still more vague and indefinite entity often resorted to in argument, an 'idea.' Those who use the latter term seem to have no fixed idea of what they mean by it."

So well settled is this doctrine, and so frequently followed and applied during the sixty-five years that have

elapsed since *Burr v. Duryee* was decided, that it has been formulated into text-book law and as such is stated in *Robinson on Patents,* Sec. 509, as follows:

> "Patents are not granted for abstract ideas, principles, modes of operation, functions or results of machines, but underlying every patentable invention is the idea of means. The thing patented is the concrete expression of this idea; the mechanism by which it is reduced to practice: Burr v. Duryee, 1 Wall 531; O'Reilly v. Morse, 15 How. 62. It is this which must be set forth in the claim, in distinction from the discovery or conception, idea or mode of operation which it embodies; Robinson, Sec. 509."

Railway Co. v. Sayles, 97 U. S. 555, 1878, was based on the Tanner Car Brake patent.

This Court here applied the doctrine of primary patents and secondary patents to the Sayles case, and held that patent to be a secondary patent and not a primary one, and therefore narrowed its construction enough to negative its infringement by the defendant, and reversed Judge Drummond's decision to the contrary.

In *Morley Machine Co. v. Lancaster,* 129 U. S. 273, 1889, Mr. Justice Blatchford delivered the opinion of this Court, wherein he embodied the fourth great decision on the subject of primary and secondary patents. He began that explanation by stating the law to be that the claims of a mere improver upon a prior machine, which was capable of accomplishing the same general result, would properly receive a narrower construction, than the liberal construction to which the claims would be entitled, of the first person to produce that result. Thereupon, Justice Blatchford reviewed the McCormick case and the Sayles case, in particular support of that doctrine.

The foregoing are the first four of the leading Supreme Court cases on the law of primary and secondary patents. We will not take the time to analyze all the next cases, but will refer to some of the later cases.

Dashiell v. Grosvenor, 162 U. S. 432, 1896, was based on letters patent No. 425,548, granted to Lieutenant Seabury on an improvement in breech loading cannon. Judge Morris held the patent valid and infringed, and had entered a decree for the plaintiff (62 F. R. 584). The Circuit Court of Appeals for the Fourth Circuit, while not disagreeing with Judge Morris on either of those two points, had reversed his decision on the ground that it would prohibit the officers in charge of the navy yard from manufacturing guns for use on the war vessels of the United States.

This Court did not consider that subject but affirmed the decision of the Circuit Court of Appeals on the ground of non-infringement. In arriving at that conclusion, this Court held, and had to hold that identity of function between a patent in suit and the prior art, is enough to relegate that patent to a narrow construction. 162 U. S. page 432, last paragraph.

> "As several of the patents above described show that, at the date of the Seabury invention, it was no longer a novelty to perform the three movements necessary to open and close the breach, by the continuous movement of a single lever, it follows that the first claim of this patent cannot receive the broad construction claimed, but must be limited to the precise mechanism described."

THE AIR BRAKE CASE, 170 U. S. 537.

Precisely the same argument urged by plaintiffs, which has been followed by the Court of Appeals for the Seventh

Circuit, was used by the patentee in the Air-Brake case, where it was argued that he was the first to effect the new function and result of "admitting train pipe air directly to the brake cylinder" by the shifting of a valve into open (or operative) position through the medium of the extreme traverse of the piston (see bottom of page 560 of Report), this Court saying:

> "A construction is given by complainants and the Circuit Court, to the second claim, which eliminates the mechanical features described, and one which could be supported only on the theory that the claim was for a method or process."

So here, the construction contended for by the plaintiffs eliminates all the mechanical features described in the patent and its claims and attempts to identify plaintiff's "improvement," only by the function of its automatic tripping of the lever and not by the particular mechanical elements which enter into the assembly. In the Westinghouse case, the great utility and primary character of the patented device were elaborated upon and made much of; replying to all of which this Court said (page 569):

> "But, after all, even if the patent for a machine be a pioneer, the alleged infringer must have done something more than reach the same result. He must have reached it by substantially the same or similar means, or the rule that the function of a machine cannot be patented is of no particular value. To say that the patentee of a pioneer invention for a new mechanism is entitled to claim every mechanical device which produces the same result is to hold, in other language, that he is entitled to patent the function."

Kokomo Fence Machine Co. v. Kitselman, 189 U. S. 8, 1903, involved the Kitselman patent No. 346,322, granted Jan. 8, 1887, on a wire fabric machine. The case originated in the United States Circuit Court for the Northern Dis-

trict of Illinois; and was taken by a writ of certiorari t
this Court. The case turned in each of the Courts, upo
the question whether the defendant's machine infringe
the Kitselman patent; the defendant's machine having bee
made and used under the later Whitney patent No. 502,02
of Dec. 24, 1895.

This question of infringement turned in each of th
Courts, upon the question whether the Kitselman pate
was a primary patent or a secondary patent; each of th
Courts holding that, if it was a primary patent it was e
titled to a construction broad enough to cover the Whitn
machine; but if it was a secondary patent, it was not e
titled to such construction. The lower Court held that th
Kitselman patent was not a primary patent; and therefo
that Court decided the question of infringement in the neg
tive. The Circuit Court of Appeals held that the Kitse
man patent was a primary patent; and therefore decide
the question of infringement in the affirmative.

Having found that the Circuit Court in which the ca
originated was right in holding the Kitselman patent to
a secondary patent and not a primary one; this Court,
speaking of the comparative character of the Kitselma
machine and of the defendant's machine, announced i
agreement with the Circuit Court in the conclusion that

> "the machines lack that identity of means and ide
> tity of operation which must be combined with ide
> tity of result to constitute infringement." 189 U.
> p. 24, lines 13 to 16.

In *Cimiotti Unhairing Co. v. The American Fur Ref*
ing Co., 198 U. S. 399, 1905, decided May 15, 1905, the la
paragraph of the syllabus reads as follows:

> "Where, the patent does not embody a primary i
> vention, but only an improvement on the prior art, t
> charge of infringement is not sustained, if defendan
> machine can be differentiated."

The language of the decision itself on this point of law reads as follows:

> "Where the patent does not embody a primary invention, but only an improvement on the prior art, and the defendant's machines can be differentiated, the charge of infringement is not sustained," 198 U. S. 414, lines 19 to 22.

In the later instructive decisions of this Court enumerated on page 25, *ante,* of this brief, there has been no departure from the foregoing rules, and it is believed, speaking with the utmost respect, that the Court of Appeals for the Seventh Circuit erred in holding plaintiffs narrow, limited, secondary patent was infringed by defendant's entirely different patented device.

We submit that the Court of Appeals for the Seventh Circuit failed to apply to the Winters & Crampton patent and its relation to the fasteners of the prior art and to the defendants alleged infringing fastener, the definite and well settled principles of Patent Law, which this Court has established in the foregoing decisions dealing with the questions of validity, construction and infringement of Letters Patent.

It is fundamental that the essence of a patented invention is to be looked for and found in the *"thing,"* whether it be a machine, an article or a process, which is described in the specification of a patent, and that the claims are but the definitions of that alleged invention. They must be read in view of the "thing" that was new and no mere phraseology can expand their scope beyond that which was in fact the real invention, if any, disclosed in the patent. This principle is completely neglected by the Court of Appeals for the 7th Circuit which seems to treat the claims in issue in the Winters and Crampton patent in suit as utterly disassociated from the invention, if any, and even from the device shown and described in that patent. It overlooks the vital distinctions between defendants fastener and the fastener of the patent in suit and ignores the requirements in the Winters & Crampton specification and

the limitations, wherein the top arm of the lever must ride over the top edge of the keeper which, we respectfully submit, must be imposed on the claims.

Another fundamental principle, which that Court overlooked, is that a patent must be construed with reference to those devices which were known and used or patented or disclosed in printed publications prior to the date of the alleged Winters & Crampton invention, and that when so construed, the patent and its claims should be compared with the defendant's structure to ascertain whether the invention, *which was actually made by the patentees,* has been taken by the defendant.

The Court of Appeals for the Seventh Circuit said near the bottom of page 140 of the Sanitary Record:

> "Appellant's keeper, though supplied with 'a head formed with upper and lower curved outer sides coming substantially to a point' does not, as in the patent in suit, make use of the curved upper sides to direct the movement of the latch when the door is shut. If the arm on its lever extended a little further it would contact with the upper curved outer side portion of the head of the keeper."

The first sentence is a correct statement, but the second shows a serious misconception of the actual facts set forth in the record and of the mechanical operation of the defendant's Dent or Sanitary device.

In the first place, there is no arm on the top of defendant's lever in the sense that the term is used in Winters & Crampton's patent. There is present an offset, inclined, short radius cam, and if this cam be extended "a little further" it would not contact with the upper curved edge of the keeper, but it would hit the apex of the triangle at the nose of the keeper and would wedge the latch lever so that it could not lock.

At the top of page 141, the Sanitary Record, the Court says:

> "Concede the existence of claims that are narrow and restricted to structural design only, yet even in such claims there must be some range of equivalency."

This we submit is an error and is not in harmony with the many decisions of this Court, among which the following may be cited:

In *Computing Scale Company v. Automatic Scale Company*, 204 U. S. 609, this Court said (p. 621):

> "Conceding that this spiral rod and its connections with the cylinder in the manner and for the purposes stated is a novel feature in the combination and entitled to protection, it is of that narrow character of invention which does not entitle the patentee to any considerable range of equivalents, but must be practically limited to the means shown by the inventor. The distinction between pioneer inventions permitting a wide range of equivalents and those inventions of a narrow character, which are limited to the construction shown, has been frequently emphasized in the decisions of this Court."

In *Boyd v. Janesville Hay Tool Co.*, 158 U. S. 260, this Court said (p. 261):

> "It clearly appears that Boyd was not a pioneer in this department of machinery. Many inventors had preceded him, and many patents had been issued for improvements in hay-carriers in form and purpose similar to those described in Boyd's specification. We think the case is one where, in view of the state of the art, the patentee is only entitled, at the most, to the *precise devices* mentioned in the claims."

In *Blake v. San Francisco*, 113 U. S. 679, this Court said (p. 681):

> "The evidence shows that Bailey was not the first to conceive the idea of a device for opening or closing rigidly an automatic valve. The same thing had been done by means of wedges and screws and other devices. *He cannot, therefore, cover by his patent all the devices for producing this result, no matter what their form or mode of operation. The claim must be confined to the specific device described in the specifica-*

tion and claim, namely, a pin-hole and pin. If this construction of the claim be adopted, it is clear that no infringement is shown."

This Court in its many decisions referred to and applied in *Westinghouse v. Boyder Power Brake Co.,* 170 U. S. 537, 658, referred to, *supra,* has pointed out that infringement does not necessarily follow because the language of the claim as a matter of words can be read upon a defendant's structure, but that substantial likeness in character and mode of operation are essential to infringement. Such considerations the Court of Appeals for the Seventh Circuit absolutely ignored.

POINT E.

THE CLAIMS OF THE WINTERS & CRAMPTON PATENT ARE FURTHER LIMITED BY THE CONCLUDING WORDS "Substantially as described." (Sanitary R. p. 72.)

Each of the plaintiffs' claims concludes with the words "substantially as described." It has been held in a long line of cases that where a patentee deliberately concludes and limits his claims to a structure "substantially as described" or "substantially as set forth," these words limit such a claim to the specific combination of elements described.

"Substantially as set forth" are words of limitation in a claim which limit the combination to the elements described, *Pope v. Gormully,* 144 U. S. 248.

In *Singer v. Cramer,* 192 U. S. 265, 48 L. Ed. 437; 24 C. T. 291, this Court said:

"To prevent a broadening of the scope of the invention beyond its fair import in the light of the circumstances surrounding the issuance of the patent, the words of limitation contained in the claim must be given due effect, and, giving them such effect, the state-

ment in the first claim of the elements entering into the combination must be construed to refer to elements in combination having substantially the form and constructed substantially as described in the specification and shown in the drawing."

This rule has been applied in the lower Courts in the following cases:

Fox v. Perkins, 52 Fed. 204; 3 C. C. A. 32;
Reed v. Golove, 61 Fed. 958;
Brill v. St. Louis, 90 Fed. 666; 33 C. C. A. 213;
Simons v. Hathorn, 93 Fed. 958, 36 C. C. A. 24;
Carnegie v. Brislin, 124 Fed. 213; 59 C. C. A. 651;
Rose v. Dowden, 157 Fed. 681, 85 C. C. A. 449.

Defendant's fastener has no structure "substantially as described" in Winters and Crampton's claims.

POINT F.

THE SANITARY AND DENT DEVICES, WITH THEIR SHORT RADIUS CAM CONSTRUCTED UNDER PATENT NO. 1,575,647, ARE STRUCTURALLY DIFFERENTIATED FROM THE WINTERS & CRAMPTON PATENT BY LANGUAGE APPROVED BY THE PATENT OFFICE, AND DO NOT INFRINGE.

The defendant's device was made by the Dent Hardware Co., defendant in No. 547, and was sold to the Sanitary Refrigerator Co., defendant in No. 128. It is constructed as seen in defendant's patent No. 1,575,647 (Sanitary R. p. 125), and comprises a keeper of an entirely different construction and a latch lever of an entirely different character from the plaintiffs'. The plaintiffs' keeper, as we have tried to make clear, is old. The **top edge** of the plaintiffs' keeper trips the plaintiffs' latch when standing vertical. **The top edge of defendant's keeper has no function whatever.** As seen in Fig. 3 of the defendant's patent No. 1,575,-647, facing next page, defendant's keeper has a lateral

yellow pin b^6, which is adapted to contact with the offset cam c^1. (See Fig. 4 of defendant's patent.) The upper edge of defendant's keeper has no co-action whatever with the latch. The defendant's lever has no arm corresponding to the right-angled arm 12 of the plaintiffs' patent 1,385,102. Instead, defendant has an offset, obliquely arranged cam face c^1 which co-acts with the lateral pin or lug b^6 projecting from the inside wall of the keeper. While defendant's patent No. 1,575,647 was pending in the Patent Office, the Patent Examiner, with entire propriety, cited the plaintiffs' patent in suit, No. 1,385,102. A disclaimer was accordingly inserted, at the bottom of page 2, lines 57 to 74, of defendant's patent (Sanitary R. p. 127), reading as follows:

> "I am aware of patent No. 1,385,102, dated July 10, 1921, and I disclaim the structure therein disclosed, as my invention is differentiated therefrom, since whereas the structure disclosed in said patent utilizes a pin 12 carried by the latch arm 1., which co-acts with an upper cam edge 18 of the keeper in the upper member 17, in my novel construction, my keeper plate b^3 has no function, but the pivotal latch c^6 carries a cam c^1 inclined to the pivot of said latch and adapted to co-act with a pin b^6 carried by and laterally projecting from the inner wall of the keeper plate b^3 thereby to swing the terminal tongue of the latch into the horizontal locking position; and to none of the constructions of the prior art do I herein make claim."

It, therefore, clearly appears that the Patent Office was fully appreciative of the fact that defendant's construction was structurally and functionally different from plaintiffs' patent and structure, and defendant's patent was accordingly allowed.

DEFENDANT'S SHORT RADIUS CAM.

If the Court will look at the various Schrader patents owned by the Dent Hardware Co. and issued in the year

March 9, 1926. 1,575,647

T. O. SCHRADER

LOCK DEVICE FOR REFRIGERATOR DOORS

Filed June 30, 1925

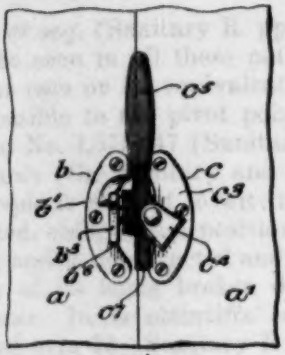


Fig. 1.

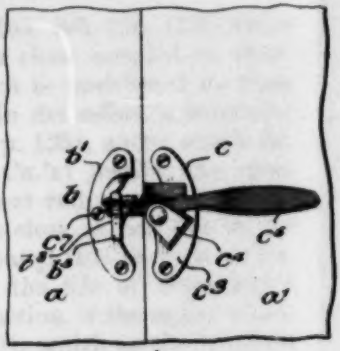


Fig. 2.



Fig. 3.

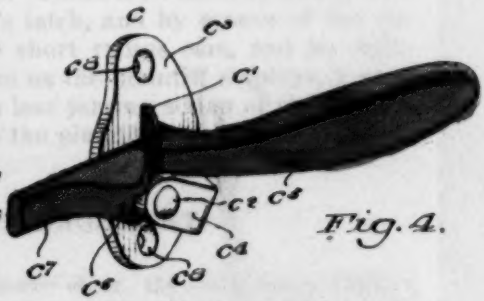


Fig. 4.



Fig. 5.

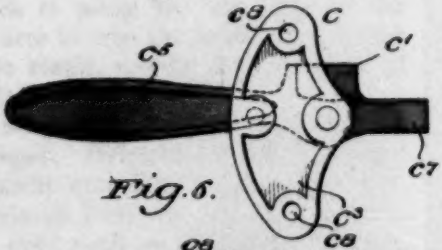


Fig. 6.



Fig. 7.



Fig. 8.

Inventor
Thomas O. Schrader
By Middlebrook & Fowler
Attorneys

March 9, 1926.

T. O. SCHRADER

LOCK DEVICE FOR REFRIGERATOR DOORS

Filed June 30, 1925

914, *et seq.* (Sanitary R. pp. 99, 103, 105, 116, 119), there ill be seen in all these patents a close coupled or short adius cam or its equivalent, which is positioned as close s possible to the pivot point. In defendant's Schrader atent No. 1,575,647 (Sanitary R. p. 125), under which de- endants (the Sanitary and Dent Co.'s) justify, the same rinciple is present to wit: the short radius or the closely oupled, oblique cam positioned as close as possible to the ivot and so constructed and collocated that there is no lia- ility of its being broken during the life of defendant's astener. In the plaintiffs' construction, if the upper right- ngled arm 12 (Sanitary R. p. 70), which is the weakest art of the whole contrivance, breaks or fractures, then laintiffs' latch is useless. There is no liability of any such ction in the defendant's latch, and by reason of the em- loyment of the oblique short radius cam, and no right- ngled elongated top arm as the plaintiff employs, a more quable movement and a less jarring action of defendant's atch is attained than in the plaintiffs' device.

NO INFRINGEMENT.

As we have tried to make clear, the only novel feature, any, in plaintiff's latch is using the top edge of the eeper to kick the upper arm to trip the latch lever, which ffects no new function or result, merely the old result of he lever tripping when it hits the keeper.

Defendant's lever has no part which ever contacts with he upper edge of its keeper. Defendant's offset oblique am contacts with an inwardly extending lug on the keeper, hich is entirely disassociated from the top edge thereof. laintiff's claims do not even read on defendant's device, or is defendant's device a reversal of any parts of plain- iff's patent, as they attempt to show in the mongrel draw- ng at the bottom of the plate facing p. 29 of their brief. his mongrel which they call "Defendant's latch" resem- les nothing made by defendants or anyone else. Defen- lant has no keeper of the contour portrayed or conical pin

as shown in the mongrel and what they call an "oblique cam" appears to be merely a flat plate coincident with the handle. It is doubtful, if the mongrel would work or lock at all since, as shown the stub plate at the top of the handle, would hit the conical pin and stop. If the defendant's structure is tortured or metamorphosed into being a reversal of plaintiff's then by the same token, plaintiff's latch is a mere reversal of the Charles latch discussed on page 21, *ante*. As defendants **have no lever with a top arm riding on the top edge of the keeper**, it is submitted there is no infringement, as was found by the Circuit Court of Appeals for the Third Circuit. (Exhibit 1, attached hereto.)

POINT G.

THE GRANT TO THE DENT HARDWARE CO. OF PATENT NO. 1,575,647, COVERING THE SANITARY AND DENT DEVICES (SANITARY R. p. 126), CREATES A PRESUMPTION THAT THERE WAS A SUBSTANTIAL DIFFERENCE BETWEEN PLAINTIFFS' AND DEFENDANT'S LATCH.

At this point, we desire to call attention to a rule of law, as enunciated by this Court, to the effect that where a defendant justifies under a patent, as defendants (Sanitary and Dent) do here, the issuance of such patent to a defendant raises a presumption in its favor, a presumption that there are clear structural differences and that it has, *prima facie*, a right to manufacture or use its own patented device, as well as the plaintiffs have a right to manufacture theirs. This is particularly so, where the patent under which defendant operates is not obviously an improvement upon plaintiffs' patented machine, does not obviously take plaintiffs' machine as a foundation or starting point, but, as here, is an improvement upon the expired Dent, Keil and Charles patents. This rule is so well established that we deem it unnecessary to do more than cite some of the cases wherein it was applied, to wit: *Corning v. Burden*, 15 How. 271; *Miller v. Eagle Mfg. Co.*, 151 U. S. 208; *Boyd v. James*-

ville Hay Tool Co., 158 U. S. 261; *Kokomo v. Kitselman*, 189 U. S. 8; and in the lower courts in *Bates v. Keith*, 82 Fed. 102, and *Boyden v. Westinghouse*, 70 Fed. 816; *Tool Co. v. Tool Co.*, 123 Fed. 894, and *Winters v. Dent*, 20 Fed. 2d 671.

In view of the above decisions, we are entitled to insist that weight should be given to the fact that defendant's device is also patented. If the Court will read the claims of the Schrader patent No. 1,575,647 (Sanitary R. p. 127), under which defendants justify, it will be evident that the Patent Office has allowed excellent claims exactly descriptive of defendant's structure, and this notwithstanding the existence of plaintiffs' patent. We, therefore, ask that defendants be given the benefit of this presumption which this Court in the above-cited cases says a defendant is entitled to.

Another way of stating the rule is that where a defendant has a patent, the presumptions of patentability are balanced and prior and subsequent patentees stand in equilibrio. Judge Hazel thus stated the rule in the middle of page 894, 123 Fed. in the case of *American Pneumatic Tool Co. v. Phila. Pneumatic Tool Co.*, 123 Fed. 891, wherein said the Court:

> "Moreover, it must not be overlooked that the defendant is manufacturing its tool, which has gone into general use, under a subsequent patent, to the issuance of which no objection was made by the Patent Office. The cases hold that, where a defendant constructs his invention in accordance with a patent held by him, the presumptions of patentability are balanced, and prior and subsequent patentees stand in equilibrio."

We are making no contention generally that the grant of a patent to a defendant gives such defendant the right to infringe an earlier patent of a plaintiff. We do, however, insist that mechanical patents are granted upon structures or differences in structures, and as this Court, in *Kokomo v. Kitselman*, 189 U. S., near the conclusion, said:

"Considering the complainants and Whitney as

alike having improved on the prior art, the question is whether the specific improvements of the one actionably invaded the domain of the other. *The presumption from the grant of the letters patent is that there was a substantial difference between the inventions.*"

In the instant case, the Patent Office has done far more than merely grant patent No. 1,575,647, under which defendant justifies. It has permitted and, in addition, approved in lines 57 to 74 of page 2 of said patent (Sanitary R. p. 127), a succinct and accurate statement of the points of difference in the rival latches.

POINT H.

THAT THE CORRESPONDING PARTS OF THE RIVAL LATCHES ARE NOT INTERCHANGEABLE, IS AN IMPORTANT TEST IN DETERMINING INFRINGEMENT. (*Miller v. Eagle Mfg. Co.*, 151 U. S. 186.)

If we lay plaintiffs and defendant's drawings side by side, and substitute the plaintiffs' keeper for defendant's, or vice versa, it will be manifest that either structure would be inoperative. If we should substitute the plaintiffs' latch lever for the defendant's, or vice versa, it will be apparent that such a latch structure would be inoperative. (Dent R. p. 67.) This is a good working rule by which to determine infringement, as it has been held in numerous cases that where the corresponding parts are not interchangeable, it tends strongly to negative infringement. This rule has been applied in the lower courts as follows:

"It is held that non-interchangeability of parts in a machine tends strongly to negative infringement, Miller v. Eagle Mfg. Co., 151 U. S. 186; 14 Sup. Ct. 310; 38 L. Ed. 121; Pittsburg Meter Co. v. Pittsburg Supply Co., 109 Fed. 644, 48 C. C. A. 580. Neither is the fact that the alleged infringing device may effect the same result always determinative of infringement. Water-

Meter Co. v. Desper, 101 U. S. 332, 25 L. Ed. 1024; Westinghouse v. Power Brake Co., 170 U. S. 537, 18 Sup. Ct. 707, 42 L. Ed. 1136. In the latter case, the Supreme Court said: 'But, after all, even if the patent for a machine be a pioneer, the alleged infringer must have done something more than reach the same result. He must have reached it by substantially the same or similar means, or the rule that the function of a machine cannot be patented is of no special value' (123 Fed. 896)."

In *Boyer v. Cleveland Pneumatic Tool Co.*, 185 Fed. 808, the Court of Appeals for the Sixth Circuit, applied the rule in the following language at the conclusion of its opinion on page 810:

"Moreover, the mechanism of the two hammers is not interchangeable and non-interchangeability is an important test in determining the question of infringement. Miller v. Eagle Mfg. Co., 151 U. S. 186, 14 Sup. Ct. 310, 38 L. Ed. 121. The defendant's hammer may accomplish the same results as complainant's, but it does not accomplish them by substantially the same or similar means, and consequently does not infringe."

POINT I.

IN A DOUBTFUL CASE, THE FACT THAT A PATENTED ARTICLE HAS GONE INTO USE IS NOT CONCLUSIVE OF ITS UTILITY, MUCH LESS OF ITS PATENTABLE NOVELTY.

The plaintiffs, in their brief on pages 41, 43, 44 and 60, make a great many reckless statements about how plaintiffs are doing 90% of the latch business, and how the defendants have abandoned the prior latches. In a realization of the weakness of their position, they attempt to bolster up their patent by extravagant and unwarranted statements as to commercial success. The only testi-

mony on these points, is from a single, solitary witness (one of the plaintiffs, Mr. Crampton), whose testimony is wholly uncorroborated, is mostly hearsay (Dent R. middle of pp. 44 and 46), and Crampton, further, refused to produce any of his books of record to support his wild and fantastic assertions. (Dent R. pp. 47 and 48.)

Crampton's statements that the Condit and Conroy latches were the only two on the market when he got up his contrivance, and that the majority of the Dent Hardware Co.'s locks did not automatically lock when the door slammed shut (Dent R. p. 19), are absolutely untrue. (See Dent R. pp. 20, 21 and 22.) The statements in the concluding pages of their brief as to the Dent Co.'s "abandoning" their standard lines, which they have made by millions for the last quarter of a century, are equally without warrant and at variance with the proofs.

Mr. Dent says that (Dent R. p. 27) plaintiffs' business with the patented latch amounts to only about 30% of the latch business, if it does that. There is no foundation for the plaintiffs' untruthful, loose and vague assertions that the plaintiffs' latch has superseded all other or a majority of the latches on the market, or that the plaintiffs' and defendant's latches here involved constitute the majority of latches on the market (Dent R. p. 26), or that defendants have abandoned the dozen or more latches they have made by millions during past years and are still making to make the latch in dispute (Dent R. p. 22), as a great many refrigerator manufacturers prefer a latch having a spring in it rather than a gravity operated latch, as the spring latch is more positive. (R. top p. 50.)

It is not apparent that this item of alleged use has any bearing upon any question before this Court. It is only in an unusual case that the fact of commercial success is entitled to any consideration on the question of patentability. Even in these unusual cases it must be shown that the commercial success enjoyed by the patented article was due to the patented features thereof rather than to an aggressive sales policy and extensive advertising on the part of the owner of the patent. There is no proof in this record tending to show that any alleged success which has been

enjoyed by plaintiffs is due to the features covered by the claims in suit, or that the feature of the top edge of the keeper actuating the top arm of the lever contributed to the sale of a single fastener.

In the familiar case of *McClain v. Ortmayer,* 141 U. S. 419, 428, the commercial success of the patented device was urged as evidence of the patentability of certain differences between the patented device and the prior art. In discussing this matter, this Court said, in part:

> "That the extent to which a patented device has gone into use is an unsafe criterion, even of its actual utility is evident from the fact that the general introduction of manufactured articles is as often effected by extensive and judicious advertising, activity in putting the goods upon the market and large commissions to dealers, as by the intrinsic merit of the articles themselves. While this Court has held in a number of cases that in a doubtful case, the fact that a patented article had gone into general use is evidence of its utility, it is not conclusive even of that; much less of its patentable novelty."

This Court, subsequently, in affirming the decision of the Circuit Court of Appeals for the Sixth Circuit, in *Thompson Spot Welder Co. v. Ford Motor Co.,* 44 S. Ct. Rep. 533-536, quoted with approval the following statement by the Court of Appeals:

> "It follows, in our opinion, from what has been said, that the effect of the great commercial success of the Hermatta invention in the hands of plaintiff is entitled to little weight upon the question of invention, even were that question otherwise in doubt, which we think it is not."

The foregoing rule has been applied in many other cases such as the following, which are so familiar to this Court that we shall not quote therefrom.

Grant v. Walter, 148 U. S. 547, 556, 37 L. Ed. 552, 557, 13 Sup. Ct. Rep. 699;

Duer v. Corbin Cabinet Lock Co., 149 U. S. 216, 224, 37 L. Ed. 707, 710, 13 Sup. Ct. Rep. 850.

GENERAL SUGGESTIONS.

All patents are addressed to those skilled in the art to which they appertain or to those skilled in the nearest analogous art. Let us assume that we gave the Winters & Crampton patent to men skilled in mechanics, in the reading and understanding of specifications and drawings, and in the construction of small hardware, as refrigerator latches or fasteners. Let us suppose, in fact, that the men to whom we gave this Winters and Crampton patent were acquainted with the construction and operation of the patents, which had been issued prior to the issuance of the Winters & Crampton patent in suit, and directed them to manufacture the invention which they found in this Winters & Crampton patent following the instructions conveyed to them by its specification and drawings when read in view of their knowledge of the prior art. Is it reasonable to suppose that these men, or that any of them, following the instructions and directions thus given them, and seeking to embody in physical form the invention of the Winters & Crampton patent, would produce the defendant's fastener, or anything that looked like or resembled the defendant's fastener? The statement of the questions shows that it would be preposterous to expect that they would produce the Dent or Sanitary fastener or anything like it, and yet, there can be no infringement unless those skilled in the art, by following the directions of the patent in suit, and without the exercise of invention on their part, can produce the defendant's fastener.

We, therefore, submit that no one, skilled in the art and guided and directed by the Winters & Crampton patent, could by the exercise of mere mechanical skill produce the defendant's fastener. This, we submit, affords a decisive test of the question of infringement. Before the Court can say that there is infringement it must be evident that the defendant's fastener could have been made from the Winters & Crampton patent sued on without further direction or instructions. Even if the claims of the plaintiffs' patent

are readable upon the defendant's fastener, it does not necessarily follow that the latter is an infringement as was held in the familiar *Air Brake Case,* 170 U. S. 537, since there can be no infringement unless the defendant's construction, as a structure or mechanism is the same, or substantially the same as the plaintiffs' structure. On this point, said this Court:

> "An infringer of a patent, even if it is a pioneer patent, must do something more than reach the same result; he must reach it by substantially the same or similar means."

Applying this rule to the instant case, it is urged (a) that the patent in suit is not a pioneer patent, and (b) while the defendant's device reaches the same result as plaintiffs's and for that matter all the prior art refrigerator fasteners, to wit, the automatic locking of a door when it is slammed shut, it does not do it by "substantially the same or similar means."

Practically all the refrigerator latch patents in this record effected an automatic locking of the door in no matter what position the latch may assume, and in view of the Dent, Keil and Charles patents alone, not to mention the others, in the year 1921, at the date of the patent in suit there was absolutely no warrant in this ancient art for a broad patent controlling the automatic locking of a latch lever in its vertical or horizontal position.

CONCLUSION.

There can be no reasonable contention made by plaintiffs that defendants' (Sanitary and Dent) fastener copies in any respects the features of the fastener of the Winters & Crampton patent in suit, except in such particulars as are a common mechanical inheritance from the entire prior art to which Winters & Crampton added nothing of value which was not already available in many forms.

We submit that the fundamental similarities between the defendant's fastener and those of the prior art and the

striking differences between the defendant's fastener and the fastener of the Winters & Crampton patent in suit can not be ignored. They necessarily lead to the conclusion that the defendant's Sanitary and Dent fastener is not an infringement of the Winters & Crampton patent, even if it is valid, which we deny.

We respectfully submit that the reasoning and conclusion of the Court of Appeals for the Third Circuit, following the views of Judge Dickinson, rather than those of the Court of Appeals for the Seventh Circuit, will find favor with this Court, and that in both cases there should be ordered a decree dismissing the bill with costs.

Respectfully submitted,

E. HAYWARD FAIRBANKS,
Counsel for Sanitary Refrigerator Co. and Dent Hardware Co., Defendants.

EXHIBIT 1.

(28 Fed. 2d 583.)

In the
United States Circuit Court of
Appeals
For the Third Circuit

—

No. 3727. October Term, 1927.

—

Alexander F. Winters and Basil R. Crampton,
Appellants,
v.
Dent Hardware Company,
Appellee.

—

Appeal from the District Court of the United States for the District of Pennsylvania.

—

(Filed October 4, 1928.)

Before Buffington, Woolley and Davis, Circuit Judges.

—

Davis, Circuit Judge.

This is an appeal from a decree of the District Court dismissing the bill of complaint charging the defendant with infringing United States Letters Patent No. 1,385,102 issued to Alexander F. Winters and Basil R. Crampton July 19, 1921. All seven of the claims were alleged to have been infringed. The Court held claims 1, 2, 3, 4, and 7 to be valid but not infringed and claims 5 and 6, which plaintiffs sought to withdraw, invalid.

The appellants brought suit against the Sanitary Refrigerator Company for the infringement of the patent in question in the United States District Court for the Eastern District of Wisconsin. That court held all seven claims valid and infringed. An appeal was taken to the Circuit Court of Appeals for the Seventh Circuit. There, the patentees conceded that claims 5 and 6 were invalid and the appellee here concedes that the other claims are valid if limited to the specific structure disclosed, and when so limited, it says it does not infringe.

Claims 1 and 7 are typical. They disclose in combination a door, a casing or joint, a keeper attached to the casing and a latch lever attached to the door rather than to the casing.

The patentees proceeded upon the assumption that latch levers of this general type in the prior art were all attached to the casing and that one of the novel disclosures in their patent was the transposition of the latch from the casing to the door and the keeper from the door to the casing. They say in their specifications:

> "The swinging lever latch, or as it is better known, the Condit latch, is pivotally connected at one end to the door jamb or casing, allowing the door to be opened when the latch is thrown to an upper vertical position, and coming down across the meeting edges of the casing and door when swung to horizontal position, engaging with a cam member on the door to wedge the door tightly shut. This latch is a very serviceable latch but is relatively hard to operate due to its attachment to the casing instead of the door, and the same is liable to drop to horizontal position in which case the door cannot be closed without first raising the lever to upper vertical position while, many times, the door is inadvertently swung toward closed position and against the lever in its horizontal position with injury either to the lever or door or both. In the present invention, it is a primary object and purpose to provide a latch which may be pivotally connected to the door and which is automatically operated to engage with a retaining member or keeper fixed on the door casing

when the door is closed irrespective of the vertical or horizontal position of the latch lever, working as well in the one case as the other. . . . The mounting of the lever on the door is of value as use of one hand only is necessary for unlatching and drawing the door open. The ability to close the door and latch it automatically, irrespective of the position of the latch lever insures against injury to the latch or door and also insures that the door will be latched when it is swung shut."

The patents, however, to Keil, No. 564,448; to Dent, No. 670,506; to Schrader, Nos. 1,117,709 and 1,170,685, and to Ward, No. 1,250,736 show latches on the door and keepers on the casing. So there is nothing new in the transposition by the patentees of the latch from the casing to the door. Neither is there anything new or novel in the door or casing as such. Patentable novelty, therefore, must be found, if at all, in the particular form or function of the keeper or latch or in both.

The keeper in the Keil patent is strikingly similar in both form and function to that of the patent in suit. In Keil, the keeper has a base attached to the casing by three screws. From this base a post extends outwardly for a short distance and terminates in a triangular head, which on the under side extends downwardly for a distance below the lower edge of the post. The head of the latch is the apex of the triangle. The two sides terminating in the head are practically straight while those of the patent in question are somewhat curved. From the apex of the keeper, when attached to the casing, one of the triangular sides extends upwardly and the other downwardly. The inner or lower side is cut upwardly and somewhat inwardly at a slight angle to the vertical, forming a wedging cam. This meagre description reads equally well on the keeper of either the Keil patent or the patent in suit.

The function of every part of the Keil keeper is practically identical with that of the keeper of the patent in question. One or the other of the arms of the latch lever of the Keil latch slides down on the lower triangular side of the keeper when the door is being closed. Which one of these

two arms contacts with this lower side depends upon the position in which the latch lever is when the door is closed. The function performed by the plaintiffs' keeper and the Keil keeper in cooperation with the latch levers is the same function performed by keepers generally in the prior art patents. Only one of the sides of the Keil keeper, however, engages the arms of the latch lever and serves as a cam to direct the lever when the door is closed, but this is due to the design of the arms of the levers, and not to difference in principle of operation.

The next question concerns the latch lever. Judge Evans in construing this patent in the Circuit Court of Appeals for the Seventh Circuit said that, "patentable novelty resides in the structural differences of the latches (either in the keeper member or latch member or both)." The latch lever of the patent is about four inches long. A pin is run through the lever about one inch from the end which engages the keeper. This serves as a pivot or fulcrum. This latch lever is really a handle having two right angled arms near the pivot. One is the extension of handle beyond the pivot and the other is at right angles to it. In operation one of these two arms "is engaged with an outer portion of the keeper when the door is moved to closing position to swing the lever from a vertical position to a horizontal and engage the other arm under the keeper, and the other (arm) of which is engaged with a different outer portion of the keeper when the door is moved to closing position and the lever is horizontal to run the lever upwardly toward vertical position or until said other arm passes under and engages with the keeper to hold the door closed." These general features and functions of latch levers were old in the art.

The lever in the Keil patent has the general features of the plaintiffs' lever. It will lock when the door is closed whether the lever is in a horizontal, vertical or an intermediate position, because of the cooperation of the two arms 4 and 5 of the lever latch with the keeper "to force the door tightly to" when it is shut. The keeper is mounted on the door casing just as in the patent in suit. The latch lever is pivotally mounted between its ends on the door.

One of the ends forms the operating handle and the other contains two arms one or the other of which engages the cam on the keeper when the door is closed.

The elements common to the devices of Keil and the plaintiffs are: a door, a casing, a keeper attached to the casing, a lever latch pivotally attached to the door, means on the keeper to engage the arms of the latch and means on the latch to engage with the keeper. The two arms of the engaging end of the Keil lever, however, are in the same parallel plane while the two arms on the plaintiffs' lever are at right angles, but both perform the same function, and this difference is one of design and not of principle of operation.

The Charles Patent, No. 702,185, issued June 10, 1902, shows a device having a latch lever corresponding in its essential features with the plaintiffs'. It has a handle portion which may stand in a horizontal, vertical or intermediate position. There are two arms on the other end, one extending beyond the pivot or fulcrum and the other substantially at right angles to it. The function of these arms, coacting with the keeper, is to fasten the door when it is shut and to hold it in a closed position. This latch considered as a design structure is somewhat different from the plaintiffs', but functionally both are substantially the same.

The function of the arms generally is to trip, or give a kick to the latch lever by the coaction of the arms with the keeper when the door is closed. The object of all these tripping devices, which are numerous and old in the art, is to fasten the door and hold it a closed position regardless of the position of the lever when the closing operation begins.

The art was crowded with latches that automatically lock when the door is closed when this patent to Winters and Crampton was issued. In addition to the patents to Keil and Charles, there are patents involving the same general features and functions to Dent, No. 670,506 (1900); to Schrader, No. 1,117,709 (1914), No. 1,170,685 (1915), No. 1,265,120 (1917); and to Ward, No. 1,250,736. In speaking for the Circuit Court of Appeals for the Seventh Circuit, Judge Evans said of the plaintiffs' patent:

"Whether the other claims (than 5 and 6 admitted to be invalid) are infringed depends entirely upon the position of the patent in suit in the art. No difficulty would be experienced in finding infringement if the patent were a pioneer or was one covering such an improvement as entitled it to a broad range of equivalency. But the patent does not occupy any such position. It is an extremely narrow one as a reading of the claims at once discloses. Moreover, the record shows a prior art loaded with latches possessing some of the features of appellee's latch . . . Patentable novelty, if any exists, is restricted to the particular structure disclosed . . . The precise question then is, does appellant avoid infringement by placing a lug on the near side of the head of its keeper, the surface of which is curved similarly to the outer surface of its head and which is adapted to contract with the arm projecting from the handle portion of its lever? Concede the existence of claims that are narrow and restricted to structural design only, yet even in such claims there must be some range of equivalency."

Counsel sought to withdraw claims 5 and 6, but Judge Dickinson declared them to be invalid. We have grave doubt as to the validity of the other claims, but if they are valid, their scope is clearly confined to the structural design disclosed.

The question then arises, does the defendant's device infringe the structural design which plaintiffs' patent discloses?

The defendant's device has a keeper attached to the casing of the door and a latch attached to the door, but they are quite different in design from the plaintiffs'. The defendant's keeper is old. It has an outstanding post and a head depending below the post and with upper and lower curved outer sides coming substantially to a point, but it has a lug on the near side of the triangular head. The plaintiffs' keeper does not have this.

The latch of the defendant has one arm formed with an under cam side extending from the pivot and adapted to be

engaged under the depending portion of the keeper, but its other arm is entirely unlike it in form. The arm contacts with the lug on the keeper and this causes the lever to swing and lock when the door is closed. The upper triangular side of this keeper performs no function when the door is closed. For anything that it does, it might as well not be there. It does not coact at all with the latch, but the same side in the plaintiffs' does.

Both the design and function of the defendant's latch and keeper are unlike those of the plaintiffs'. They cannot be said to infringe unless they come within the narrow range of equivalency of a design patent entering a crowded art. Structural design claims have some "range of equivalency," but that range must be as narrow as the invention itself. Is the lug outstanding from the head of defendant's keeper equivalent to the upper triangular side of the plaintiffs' keeper? It certainly is not in structure. It performs a similar function just as do the sides of many keepers of the prior art. Neither does defendant's latch have any arm corresponding in design to the upper arm of plaintiffs' latch. If the patent in suit were a pioneer patent and originated the trip or kick that locks the door when it is closed, then the defendant's device might infringe. The patent would be entitled to a broad construction and wide range of equivalency. But it came into an already crowded art with many patents having various devices involving arms, cams, lugs, projections, protuberances and all sorts of contrivances for holding the door in a closed position when it was shut.

The same range of equivalency here contended for by the plaintiffs, so as to include the defendant's structure, would bring plaintiffs' patent within the prior art and invalidate it. It seems to us that the choice lies between holding the plaintiffs' patent invalid for want of patentable novelty over the prior art or holding it valid but limited to the particular structure disclosed which does not include the defendant's device within its range of equivalency.

The purpose of the patent laws is to reward those who make some substantial discovery or invention which adds to knowledge and takes a step in advance in the procession

of the useful arts. It is not the object of those laws to grant a monopoly for every trifling device, every shadow or shade of an idea which would naturally and spontaneously occur to any mechanic skilled in the art. The patent laws never intended to lay such a heavy tax upon the industry of the country without seeing that some real contribution was made to the advancement of the useful arts. Atlantic Works v. Brady, 107 U. S. 192, 200. We think that the structure of the defendant's latch and keeper are so unlike those of the plaintiffs' that they do not come within the range of equivalency necessary to constitute infringement. With great respect we are constrained to reach a different conclusion from the Circuit Court of Appeals for the Seventh Circuit.

The decree of the District Court dismissing the bill because of non-infringment is affirmed.

Attest: A truly copy.

Clerk.

EXHIBIT 2.

20 Fed. 2d pp. 671-673.

WINTERS, ET AL. v. DENT HARDWARE CO.

District Court E. D. Penna. August 11, 1927.

No. 3999.

Patents 328—No. 1,385,102, for improved refrigerator door latch lever, held so far as valid to be restricted, to the particular construction, and not infringed.

Patent No. 1,385,102 for an improved refrigerator door latch lever, except as to claims 5 and 6, for a detached latch and keeper construction, which are held invalid for lack of novelty, held, in view of the prior art, to be restricted to the special construction, and not infringed.

In Equity Suit by Alexander F. Winters and another against the Dent Hardware Company. Decree for defendant.

Cyrus N. Anderson, of Phila., Pa., for plaintiffs.
E. Hayward Fairbanks, of Phila., Pa., for defendant.
Dickinson, District Judge.

This cause concerns letters patent No. 1,385,102, for an improved refrigerator door latch lever. The conclusion reached is that the claims of the patent (other than 5 and 6) should be so read as to restrict the right granted to the plaintiff's special construction, which the defendant does not infringe, and that claims 5 and 6 are invalid.

DISCUSSION.

The patent was held to be valid and infringed by decree of the United States District Court for the Eastern District of Wisconsin. Winters v. Sanitary Refrigerator Co. (no opinion filed). The parties were really the same as those before us, but the defendant here was not made formally a party to that proceeding. In consequence, the ruling is not asked to be deemed conclusive. An appeal from that ruling is pending. Were the question ruled in that case the question here raised, we would unhesitatingly follow it, because we are in full accord with the views expressed by Judge Geiger upon the feature of the patent which he discussed.

We have, however, a wholly different question here raised. The inventive feature and practical value of the plaintiff's latch is that, when the door is "slammed to," it will be automatically locked, whether the latch lever proper is in the position of pointing toward the door side or jamb side of the refrigerator. This result is accomplished by having two cams, respectively so placed as that one operates in one case and the other in the other. There is, as Judge Geiger has expressed it, not "the slightest doubt about the perfect identity of plaintiff's and defen-

dant's devices in a legal sense." This is because of the use of what may be called alternate or double cams in the construction of each device. If, however, this feature had already been appropriated by the prior art, then the only advance made by plaintiff's invention was in the special construction or position of his cam, and there would be no infringement, unless this special cam feature is copied. This the defendant has not done.

Upon the question of how much of the plaintiff's latch was an appropriation of the possessions of the prior art, Judge Geiger expresses no opinion. This question is now the only one. Cams to direct the latch to a locking position are "as old as the hills," as they followed closely upon the latch string. A real advance was made by the shifting of the latch lever from the jamb to the door. This feature differentiates many of the devices of the older art from those of the present. Another advance was made in what we have called the alternate (or, what is perhaps more accurately termed the double) cam feature. These two features in combination permit the door to be closed and locked by a slamming action whether the latch lever be in a vertical or horizontal position. If this combination did not originate with the plaintiff's patentee, the plaintiff and defendant each have the like right to a mere special construction.

This takes us to the claims of the patent and back to the prior art. Claims 5 and 6 are subject of special discussion, and will be here ignored. The scheme of the improvement outlined in the patent application is that of an advance upon the plan of the Condit latch. The main features are (1) a transference of the latch lever to the door; and (2) to assure the operation of the device, whether the latch lever be in a vertical or horizontal position when the door is slammed. The described structure is of a device which meets both these objectives, as does likewise the patented device of the defendant. Patentability and infringement are thus both present, unless these features are of "the oldest constructions in this art," and specifically as present in the Kiel, Dent and Charles patents.

It may be here interpolated that claims 5 and 6 of the

patent in suit are for a detached latch and keeper construction. There is a practical admission of the absence of novelty in these constructions aside from the applied features above mentioned, and claims 5 and 6 have been (at least attempted to be) withdrawn from the case. Whether they can be thus eliminated is in controversy. We mention this now, so that it may be clear that we are assuming the keeper and latch (considered as detached and independently) to belong to the prior art.

We wish also to reiterate that the question is not one of the validity of plaintiffs' patent, but the scope of the claims. There is in effect no denial of the right to the specific constructions described. Defendant could not well take any other position, because it also does business under the assumed protection of a like patent to its special construction. The distinction made has a controlling bearing upon the question of equivalents, and consequently upon infringement. The action of the Patent Office in rejecting claim 7 (as made in the original application) on the Ward and Kiel patents, and making no reference to the prior art bearing upon the other claims, as well as the subsequent allowance of the Schrader patent, make it manifest that the claims of the patent in suit were read and allowed as for a specific construction. The plaintiffs' application was filed December 7, 1920. Had the Condit device been a full expression of the accomplishments of the prior art at that time, as the application undoubtedly assumes, and as would seem to have been assumed throughout, there could be no doubt that the claims of the patent (other than 5 and 6) should be read so broadly as to give the patentee the full benefit of the doctrine of equivalents. Keil, however, as early as 1895 (letters patent No. 564, 448) Dent in 1900 (letters patent No. 670,506) Charles in 1901 (letters patent No. 702,185), Schrader in 1914 (letters patent No. 1,117,709) and again in 1915 (letters patent No. 1,170,685), Ward in 1917 (letters patent No. 1,250,736), and Schrader still again in 1917 (letters patent No. 1,265,120), all describe devices which, if after the patent in suit and if the claims of the latter are broadly read, would be infringements. There is in consequence no novelty in the features in respect to

which the patent in suit is asserted to be in an advance upon the Condit device, to wit, placing the keeper upon the door jamb, and the lever upon the door, and providing for the closing of the door without regard to the position of the lever.

We make this latter statement with confidence, because in the argument addressed to us this closing of the door with indifference to the position of the latch lever was asserted to be prevented in the devices of the old art solely by the fact that the lever latch was placed on the jamb. This leaves to the plaintiffs no exclusive right, except to the particular construction of their device. There can be no denial of the fact that this device has many merits. It is simple, of neat appearance, durable and effective, and in all these respects an improvement upon the latches before in use. Although the plaintiffs have exposed themselves to the charge of overstating the favorable reception given to this latch by the trade, we can well believe that it found a ready sale. There is likewise room for at least the suspicion that the defendant sought to "cut in" on the plaintiffs' trade by making a latch, in the druggist's phrase, "just as good," and that the differences in the two devices are only such as to make a difference in special construction. That there is such difference is evidenced by the findings of the Patent Office in granting a patent to each. We are here concerned only with plaintiffs' claim of right to a monopoly, and we hold that they have none, except to a latch of their own special construction, and this right our finding is the defendant does not infringe.

With respect to claims 5 and 6 a word must be added. It is a wise and general practice in patent cases to select the claims which, as the phrase goes are "in issue." All the claims of this patent were thus put in issue, and the defendant was at some pains and expense to answer to claims 5 and 6. It was not until the argument that the plaintiff sought to withdraw these claims. We will not stop to discuss any of the questions raised, but content ourselves with the finding that claims 5 and 6 are of no validity.

An appropriate decree in accordance with this opinion may be submitted.

EXHIBIT 3.

24 Fed. 2d 15

IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT, OCTOBER TERM, 1927, JANUARY SESSIONS, 1928

No. 3935

SANITARY REFRIGERATOR COMPANY, Appellant,
vs.
ALEXANDER F. WINTERS and BASIL R. CRAMPTON, Appellees

Appeal from the District Court of the United States for the Eastern District of Wisconsin

Before Alschuler, Evans, and Page, Circuit Judges

February 9, 1928.

EVANS, C. J.:

A patent, No. 1,385,102, to Winters and Crampton issued July 19, 1921, covering a latch, was the basis of the instant suit. Seven claims are involved, two of which (5th and 6th) are broad, generic claims, while the other five (1, 2, 3, 4, and 7) are narrow, specific claims.

The District Court sustained all claims and found appellant to be an infringer thereof. Thereafter appellees brought suit upon this same patent in the District Court for the eastern district of Pennsylvania and the court there held that claims five and six of the patent were invalid and the other five claims were not infringed by latches similar to the ones made by appellant.

Counsel, with commendable frankness, have made concessions in this court which greatly narrow the controverted

issues. Appellant admits the validity of claims, 1, 2, 3, 4, and 7, while appellees concede that claims 5 and 6 are invalid. The sole issue remaining, in view of these concessions, is one of infringement of the five valid claims. The concession that these five claims are valid was accompanied by the statement that validity was recognized only in view of an asserted construction which gave to each claim so narrow a field that infringement was not disclosed.

"This invention relates to a latch of the swinging lever type, particularly adapted for use on refrigerators though applicable in many other relations where a door is to be closed and held in closed position. The swinging lever latch, or as it is better known, the Condit latch, is pivotally connected at one end to the door jamb or casing, allowing the door to be opened when the latch is thrown to an upper vertical position, and coming down across the meeting edges of the casing and door when swung to horizontal position, engaging with a cam member on the door to wedge the door tightly shut. This latch is a very serviceable latch but is relatively hard to operate due to its attachment to the casing instead of the door, and the same is liable to drop to horizontal position, in which case the door cannot be closed without first raising the lever to upper vertical position while, many times, the door is inadvertently swung toward closed position and against the lever in its horizontal position with injury either to the lever or door or both. In the present invention, it is a primary object and purpose to provide a latch which may be pivotally connected to the door and which is automatically operated to engage with a retaining member or keeper fixed on the door casing when the door is closed irrespective of the vertical or horizontal position of the latch lever, working as well in the one case as the other. A further object of the invention is to construct a latch of few parts, whereby it may be economically made and which will be durable and efficient in service."

Two typical claims are one and seven, herewith quoted:

1. "In combination, a door and casing therefor, a keeper attached to the casing comprising a base, an outstanding

post and a head at the outer portion of the post, said head depending below the post and formed with upper and lower curved outer sides coming substantially to a point and with an inner upwardly and inclined side, a member attached to the door comprising a base, an integral outstanding post projecting from the base and a laterally extending arm at the upper end of the post paralleling the base, and a latch lever pivotally mounted between its ends between the said arm and base of said member, said lever having one arm formed with an under cam side extending from the pivot and adapted to be engaged under the depending portion of the keeper, a handle portion extending in the opposite direction from the pivot and another arm projecting from the handle portion a distance from the pivot and lying substantially at right angles to the first arm of the lever and likewise being formed with an inner cam side, substantially as and for the purposes described.

7. "In combination, a door and a casing therefor, a keeper attached to the casing, a latch lever pivotally mounted on the door between its ends, one end of the lever being formed into an operating handle and the other into a keeper engaging arm, a second arm projecting from the handle portion of the lever a short distance from its pivot and at an angle to the first arm, said keeper being formed at its outer sides for engagement with the respective arms when the lever is in horizontal and vertical positions, respectively, as the door is closed, to automatically operate the lever so that it will engage under the keeper when the door is entirely closed, substantially as described."

While appellee conceded that claims five and six were invalid in view of the prior art, we would have no hesitancy in so finding in the absence of this admission.

Whether the other claims are infringed depends entirely upon the position of the patent in suit in the art. No difficulty would be experienced in finding infringement if the patent were a pioneer or was one covering such an improvement as entitled it to a broad range of equivalency. But the patent does not occupy any such position. It is an extremely narrow one as a reading of the claims at once

discloses. Moreover, the record shows a prior art loaded with latches possessing some of the features of appellee's latch.

Describing appellee's latch, counsel say:

"The latch is attached to the door of the refrigerator and the keeper for the latch is attached to the door jam. * * * The swinging latch of the patent in suit is an automatic latch acting to close and tightly close when the door is moved to shut it irrespective of the position the latch lever may have whether horizontal or level."

The prior art as disclosed by the Kiel patent No. 564,448, the Dent patent No. 67,506, and Charles patent No. 702,185, the Schrader patents Nos. 1,117,709 and 1,170,685, the War patent No. 1,250,736, all refute the contention of asserted novelty, in the location of the keeper upon the door jam and the lever upon the door or in providing for the automatic closing of the door without regard to the position of the lever. It may be true that in some of these disclosures because of the law of gravity the lever invariably takes but one position.

In the Dent patent the keeper was attached to the casing while the member carrying the latch lever was attached to the door. In the Charles latch the keeper was on the door while the other member was on the casing. The Kiel latch had its keeper on the casing and the latch member on the door. Each structure, examples of which are in evidence, works automatically when the door is slammed shut whether the latch lever is in a horizontal or a vertical position.

It follows, therefore, that a patentable novelty, if any exists, is restricted to the particular structure disclosed. What, then, is the novel structure?

In nearly all of the cited prior art structures, the keeper member has a curved post against which a portion of the level strikes when the door is swung. Patentees (Claim 1) describe this portion of the keeper as "an outstanding post and a head at the outer portion of the post, said head depending below the post and formed with upper and lower outer sides coming substantially to a point." The keeper described in the Kiel patent is decidedly similar. The differ-

ences between appellees' lever latch and the prior art structures are more pronounced. Automatic operation is dependent upon the cooperation of the latch and the keeper. Consequently there naturally follow differences in structural design of one member due to difference in structure of the other member. We repeat then that patentable novelty resides in the structural differences of the latches (either in the keeper member or the latch member or in both); that the claims are narrow and their validity is conceded. Our operation of the physical exhibits discloses a basis for the concession of validity. But it is this narrow field and nothing more which the inventor possessed when he secured his patent.

As thus analyzed, limited, and explained, are the claims infringed by appellant's latch?

Appellant's structure has a keeper and a latch member located similarly to the appellees'. But it contends that both its keeper and its latch member differ from those of the patent. Its keeper does not have (so it says) "an outstanding post and a head at the outer portion of the post, said head depending below the post and formed with upper and lower curved outer sides coming substantially to a point," nor does its latch lever have one "arm formed with an under cam side extending from the pivot and adapted to be engaged under the depending portion of the keeper." It supplies its keeper with a lug on the inner or door side and its latch lever is supplied with an arm extending from the pivot of the latch member, but such arm does not engage "the depending portion of the keeper." Rather is it so constructed and so angled as to come in contact with the lug on the head of the keeper. It is this contact between the lug and the arm on the latch which causes the latch to automatically swing and lock when the door is slammed. Appellant's keeper, though supplied with "a head formed with upper and lower curved outer sides coming substantially to a point" does not, as in the patent in suit, make use of the curved upper sides to direct the movement of the latch when the door is shut. If the arm on its lever extended a little further it would contact with the upper curved outer side portion of the head of the keeper.

The precise question then is, does appellant avoid infringement by placing a lug on the near side of the head of its keeper, the surface of which is curved similarily to the outer surface of its head and which is adapted to contact with the arm projecting from the handled portion of its lever?

Concede the existence of claims that are narrow and restricted to structural design only, yet even in such claims there must be some range of equivalency.

Perhaps the expression "range of equivalency" is not a happy one nor does it describe the thought as accurately as it should. Instead, it would doubtless be better to say that a valid claim should rarely, if ever, have its language construed with absolute literacy. While a valid, narrow claim will be strictly construed, it by no means follows that its terms and expressions should be limited to a hard and fast, unbending definition. Rather must the language of each claim be defined in the light of the meaning given it by the patentee, with an appreciation of the purpose and object of the element in the patented structure. To illustrate. Patentee speaks of a keeper with its base, its post, and its head. The latter member is described as having "upper and lower curved outer sides coming substantially to a point." In our effort to ascertain whether infringement occurred, we must define the head as well as the "sides of the head." Is the outside of appellant's lug a part of the side of the head of the keeper? Certainly it is a part of the head and, in the light of the mechanics of the entire structure, the purpose it serves, we conclude that it is a part of the *side* of the head.

The decree is modified in so far as it sustains the validity of claims five and six of the patent in suit and enjoins the infringement of said claims five and six and to the extent that appellant is directed to account for its gains and profits due to the infringement of said claims five and six. Otherwise the decree is affirmed. The cost in this court shall be divided equally between the parties.

EXHIBIT 4.

IN UNITED STATES DISTRICT COURT, EASTERN DISTRICT OF WISCONSIN

In Equity

Alexander F. Winters and Basil R. Crampton
vs.
Sanitary Refrigerator Company

OPINION OF JUDGE GEIGER (Sanitary R. p. 35)

The Court: Speaking of combinations and testing out identity of co-action and result, there isn't the slightest doubt about the perfect identity of plaintiff's and defendant's devices in a legal sense. I am well satisfied to regard the Crampton patent as being an advance and as entitled to at least a range that will forbid the defendant's structure here. If upon this art it must be held that there was no room for invention, it is pretty hard to reconcile the success which the plaintiff's structure has had with the attitude of the defendant, which brings in a patent of its own here, in which patent it still asserts it is in an inventive field by introducing a slight modification over Crampton. I regard this as one of the cases in which, assuming that because of the condition of the art there may be debate upon the question of invention, the course of the plaintiff's structure in the art, the acceptance of it, can here be taken as furnishing strong support for the presumptive validity of the patent.

The plaintiff can take a decree upon that theory.

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OCT 11 1927

IN THE

Supreme Court of the United States.

SANITARY REFRIGERATOR CO.,
Petitioner,
vs.
ALEXANDER F. WINTERS and
BASIL R. CRAMPTON,
Respondents.

October Term, 1927.
No. 128

PETITION FOR REHEARING OF PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

E. HAYWARD FAIRBANKS,
Philadelphia, Pa.,
HERBERT J. JACOBI,
Washington, D. C.,
Counsel for Petitioner.

J. D. MILANS & SONS, 707 EIGHTH STREET, N. W., WASHINGTON, D. C.

IN THE

Supreme Court of the United States.

PETITION FOR REHEARING OF PETITION FOR A WRIT OF CERTIORARI.

SANITARY REFRIGERATOR CO.,
Petitioner,
vs.
ALEXANDER F. WINTERS and
BASIL R. CRAMPTON,
Respondents.

October Term, 1927.
No. 128.

Now comes Sanitary Refrigerator Co., the above-named petitioner, by its attorneys and counsellors, and petitions this Honorable Court for a Rehearing of its Petition for a writ of certiorari directed to the Honorable, the Judges of the United States Circuit Court of Appeals, within and for the Seventh Judicial Circuit, commanding them forthwith to certify and return to this Court all proceedings had by them in the suit lately before them, wherein petitioner was appellant and said Alexander F. Winters and Basil R. Crampton were appellees.

The grounds for this Petition for Rehearing are as follows:

1. Since the filing of the Petition for a writ of certiorari, there has been received the opinion of the United States Circuit Court of Appeals for the Third Circuit in the case of Winters and Crampton, appellants, vs.

Dent Hardware Company, appellee, No. 3727, October Term, 1927, filed October 4, 1928.

2. The opinion of the United States Circuit Court of Appeals for the Third Circuit, of which copies are herewith attached, is in conflict with the opinion of the United States Circuit Court of Appeals for the Seventh Circuit, of which opinion copies are also herewith attached.

3. The same patent in suit and the same issue of infringement was before both Circuit Courts of Appeal.

4. The only ground for opposition to the original Petition was that the case before the Court of Appeals for the Third Circuit had not been finally determined and this ground for opposition is removed by the filing of the conflicting opinion of the aforesaid Court of Appeals for the Third Circuit.

5. There is now before this Honorable Court copies of diverse opinions between two Circuit Courts of Appeal on the same patent in suit and on the same issue of infringement.

6. The seeming violation by the Court of Appeals for the Seventh Circuit of the decisions of this Honorable Court as to the scope to be given the claims of respondents' narrow, limited, secondary patent render the grant of the writ of certiorari peculiarly proper in the interest of substantial justice and for final settlement of what scope is to be given claims 1, 2, 3, 4 and 7 of the Winters and Crampton patent for the remainder of its term throughout the United States and the Territories thereof.

Respectfully,

E. Hayward Fairbanks,

Herbert J. Jacobi,

Counsel for Petitioner.

MEMORANDUM IN SUPPORT OF PETITION FOR REHEARING.

This is a Petition for Rehearing of a Petition for a writ of certiorari to the Circuit Court of Appeals for the Seventh Circuit. When the original Petition for this writ of certiorari was filed with this Honorable Court, there was of record the decision of the Circuit Court of Appeals for the Seventh Circuit in the case of Winters and Crampton vs. Sanitary Refrigerator Co., 24 Fed. (2d) 15, holding the Winters and Crampton patent in suit, No. 1,384,102, valid and infringed. There was also of record the decision of Judge Dickinson of the United States District Court for the Eastern District of Pennsylvania, in the case of Winters & Crampton vs. Dent Hardware Company, 20 Fed. (2d) 671, on the same issue of infringement, holding that the same patent was not infringed. The only opposition by respondents was based on the ground that at the time the original Petition for writ of certiorari was filed, the case in the Court of Appeals for the Third Circuit had not been finally determined and that there was at that time no conflict of opinion between two different Circuit Courts of Appeal.

On October 4, 1928, Judge Dickinson's opinion was affirmed by the Circuit Court of Appeals for the Third Circuit. Copies of the opinion of the Circuit Court of Appeals for the Third Circuit are herewith attached together with copies of the opinion of the Circuit Court of Appeals for the Seventh Circuit, and it will be readily observed that the same patent in suit and the same issue of infringement was before both of said Circuit Courts of Appeal.

There is, therefore, a diversity of opinion between the Circuit Court of Appeals for the Seventh Circuit and the Circuit Court of Appeals for the Third Cir-

cuit on the same patent in suit and on the same issue of infringement.

Your petitioner, therefore, shows that said decisions or adjudications of the two Circuit Courts of Appeal are at variance and in conflict with each other and the errors of the one or the other may only be authoritatively corrected in this Honorable Court.

Wherefore, your petitioner prays that this Honorable Court take cognizance of the matters herein set forth or referred to and grant unto your petitioner a rehearing of its original Petition and further grant unto your petitioner a writ of certiorari, requiring said cause and the record thereof to be certified to this Court by the United States Circuit Court of Appeals for the Seventh Circuit for review and determination herein, pursuant to the provision of the statute in such cases made and provided; and that your petitioner may have such other and further relief in the premises as the nature and circumstances of its case may require.

And your petitioner will ever pray, etc.

SANITARY REFRIGERATOR CO.,
By E. HAYWARD FAIRBANKS,
HERBERT J. JACOBI,
Counsel for Petitioner.

We hereby certify that the foregoing stated grounds in support of the Petition for Rehearing of the Petition for writ of certiorari in the above-entitled cause are, in our opinion, well founded in point of law.

E. HAYWARD FAIRBANKS,
HERBERT J. JACOBI,
Counsel of Petitioner.

Copy of this Petition has been served on counsel for respondents by registered mail, October 11th, 1928.

IN THE

UNITED STATES CIRCUIT COURT OF APPEALS

FOR THE THIRD CIRCUIT

No. 3727. October Term, 1927.

ALEXANDER F. WINTERS AND BASIL R. CRAMPTON,

Appellants,

v.

DENT HARDWARE COMPANY,

Appellee.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF PENNSYLVANIA.

(Filed October 4, 1928.)

Before BUFFINGTON, WOOLLEY and DAVIS, *Circuit Judges.*

DAVIS, *Circuit Judge.*

This is an appeal from a decree of the District Court dismissing the bill of complaint charging the defendant with infringing United States Letters Patent No. 1,385,102 issued to Alexander F. Winters and Basil R. Crampton July 19, 1921. All seven of the claims were alleged to have been infringed. The Court held claims 1, 2, 3, 4, and 7 to be valid but not infringed and claims 5 and 6, which plaintiffs sought to withdraw, invalid.

The appellants brought suit against the Sanitary Refrigerator Company for the infringement of the patent in question in the United States District Court for

the Eastern District of Wisconsin. That court held all seven claims valid and infringed. An appeal was taken to the Circuit Court of Appeals for the Seventh Circuit. There, the patentees conceded that claims 5 and 6 were invalid and the appellee here concedes that the other claims are valid if limited to the specific structure disclosed, and when so limited, it says it does not infringe.

Claims 1 and 7 are typical. They disclose in combination a door, a casing or joint, a keeper attached to the casing and a latch lever attached to the door rather than to the casing.

The patentees proceeded upon the assumption that latch levers of this general type in the prior art were all attached to the casing and that one of the novel disclosures in their patent was the transposition of the latch from the casing to the door and the keeper from the door to the casing. They say in their specifications:

> "The swinging lever latch, or as it is better known, the Condit latch, is pivotally connected at one end to the door jamb or casing, allowing the door to be opened when the latch is thrown to an upper vertical position, and coming down across the meeting edges of the casing and door when swung to horizontal position, engaging with a cam member on the door to wedge the door tightly shut. This latch is a very serviceable latch but is relatively hard to operate due to its attachment to the casing instead of the door, and the same is liable to drop to horizontal position in which case the door cannot be closed without first raising the lever to upper vertical position while, many times, the door is inadvertently swung toward closed position and against the lever in its horizontal position with injury either to the lever or door or both.

In the present invention, it is a primary object and purpose to provide a latch which may be pivotally connected to the door and which is automatically operated to engage with a retaining member or keeper fixed on the door casing when the door is closed irrespective of the vertical or horizontal position of the latch lever, working as well in the one case as the other. . . . The mounting of the lever on the door is of value as use of one hand only is necessary for unlatching and drawing the the door open. The ability to close the door and latch it automatically, irrespective of the position of the latch lever insures against injury to the latch or door and also insures that the door will be latched when it is swung shut."

The patents, however, to Keil, No. 564,448; to Dent, No. 67,506; to Schrader, Nos. 1,117,709 and 1,170,685 and to Ward, No. 1,250,736 show latches on the door and keepers on the casing. So there is nothing new in the transposition by the patentees of the latch from the casing to the door. Neither is there anything new or novel in the door or casing as such. Patentable novelty, therefore, must be found, if at all, in the particular form or function of the keeper or latch or in both.

The keeper in the Keil patent is strikingly similar in both form and function to that of the patent in suit. In Keil, the keeper has a base attached to the casing by three screws. From this base a post extends outwardly for a short distance and terminates in a triangular head, which on the under side extends downwardly for a distance below the lower edge of the post. The head of the latch is the apex of the triangle. The two sides terminating in the head are practically straight while those of the patent in question are somewhat curved. From the apex of the keeper, when at-

tached to the casing, one of the triangular sides extends upwardly and the other downwardly. The inner or lower side is cut upwardly and somewhat inwardly at a slight angle to the vertical, forming a wedging cam. This meagre description reads equally well on the keeper of either the Keil patent or the patent in suit.

The function of every part of the Keil keeper is practically identical with that of the keeper of the patent in question. One or the other of the arms of the latch lever of the Keil latch slides down on the lower triangular side of the keeper when the door is being closed. Which one of these two arms contacts with this lower side depends upon the position in which the latch lever is when the door is closed. The function performed by the plaintiffs' keeper and the Keil keeper in cooperation with the latch levers is the same function performed by keepers generally in the prior art patents. Only one of the sides of the Keil keeper, however, engages the arms of the latch lever and serves as a cam to direct the lever when the door is closed, but this is due to the design of the arms of the levers and not to difference in principle of operation.

The next question concerns the latch lever. Judge Evans in construing this patent in the Circuit Court of Appeals for the Seventh Circuit said that, "patentable novelty resides in the structural differences of the latches (either in the keeper member or latch member or both)." The latch lever of the patent is about four inches long. A pin is run through the lever about one inch from the end which engages the keeper. This serves as a pivot or fulcrum. This latch lever is really a handle having two right angled arms near the pivot. One is the extension of handle beyond the pivot and the other is at right angles to it. In operation one of these two arms "is engaged with an outer portion of

the keeper when the door is moved to closing position to swing the lever from a vertical position to a horizontal and engage the other arm under the keeper, and the other (arm) of which is engaged with a different outer portion of the keeper when the door is moved to closing position and the lever is horizontal to run the lever upwardly toward vertical position or until said other arm passes under and engages with the keeper to hold the door closed." These general features and functions of latch levers were old in the art.

The lever in the Keil patent has the general features of the plaintiffs' lever. It will lock when the door is closed whether the lever is in a horizontal, vertical or an intermediate position, because of the cooperation of the two arms 4 and 5 of the lever latch with the keeper "to force the door tightly to" when it is shut. The keeper is mounted on the door casing just as in the patent in suit. The latch lever is pivotally mounted between its ends on the door. One of the ends forms the operating handle and the other contains two arms one or the other of which engages the cam on the keeper when the door is closed.

The elements common to the devices of Keil and the plaintiffs are: a door, a casing, a keeper attached to the casing, a lever latch pivotally attached to the door, means on the keeper to engage the arms of the latch and means on the latch to engage with the keeper. The two arms of the engaging end of the Keil lever, however, are in the same parallel plane while the two arms on the plaintiffs' lever are at right angles, but both perform the same function, and this difference is one of design and not of principle of operation.

The Charles Patent, No. 702,185, issued June 10, 1902, shows a device having a latch lever corresponding in its essential features with the plaintiffs'. It has

a handle portion which may stand in a horizontal, vertical or intermediate position. There are two arms on the other end, one extending beyond the pivot or fulcrum and the other substantially at right angles to it. The function of these arms, coacting with the keeper, is to fasten the door when it is shut and to hold it in a closed position. This latch considered as a design structure is somewhat different from the plaintiffs', but functionally both are substantially the same.

The function of the arms generally is to trip, or give a kick to the latch lever by the coaction of the arms with the keeper when the door is closed. The object of all these tripping devices, which are numerous and old in the art, is to fasten the door and hold it a closed position regardless of the position of the lever when the closing operation begins.

The art was crowded with latches that automatically lock when the door is closed when this patent to Winters and Crampton was issued. In addition to the patents to Keil and Charles, there are patents involving the same general features and functions to Dent, No. 670,506 (1900); to Schrader, No. 1,117,709 (1914), No 1,170,685 (1915), No. 1,265,120 (1917); and to Ward, No. 1,250,736. In speaking for the Circuit Court of Appeals for the Seventh Circuit, Judge Evans said of the plaintiffs' patent:

> "Whether the other claims (than 5 and 6 admitted to be invalid) are infringed depends entirely upon the position of the patent in suit in the art. No difficulty would be experienced in finding infringement if the patent were a pioneer or was one covering such an improvement as entitled it to a broad range of equivalency. But the patent does not occupy any such position. It is an extremely narrow one as a reading of the claims

at once discloses. Moreover, the record shows a prior art loaded with latches possessing some of the features of appellee's latch . . . Patentable novelty, if any exists, is restricted to the particular structure disclosed . . . The precise question then is, does appellant avoid infringement by placing a lug on the near side of the head of its keeper, the surface of which is curved similarly to the outer surface of its head and which is adapted to contract with the arm projecting from the handle portion of its lever? Concede the existence of claims that are narrow and restricted to structural design only, yet even in such claims there must be some range of equivalency."

Counsel sought to withdraw claims 5 and 6, but Judge Dickinson declared them to be invalid. We have grave doubt as to the validity of the other claims, but if they are valid, their scope is clearly confined to the structural design disclosed.

The question then arises, does the defendant's device infringe the structural design which plaintiffs' patent discloses?

The defendant's device has a keeper attached to the casing of the door and a latch attached to the door, but they are quite different in design from the plaintiffs'. The defendant's keeper is old. It has an outstanding post and a head depending below the post and with upper and lower curved outer sides coming substantially to a point, but it has a lug on the near side of the triangular head. The plaintiffs' keeper does not have this.

The latch of the defendant has one arm formed with an under cam side extending from the pivot and adapted to be engaged under the depending portion of the keeper, but its other arm is entirely unlike it in form. The arm contacts with the lug on the keeper

and this causes the lever to swing and lock when the door is closed. The upper triangular side of this keeper performs no function when the door is closed. For anything that it does, it might as well not be there. It does not coact at all with the latch, but the same side in the plaintiffs' does.

Both the design and function of the defendant's latch and keeper are unlike those of the plaintiffs'. They cannot be said to infringe unless they come within the narrow range of equivalency of a design patent entering a crowded art. Structural design claims have some "range of equivalency," but that range must be as narrow as the invention itself. Is the lug outstanding from the head of defendant's keeper equivalent to the upper triangular side of the plaintiffs' keeper? It certainly is not in structure. It performs a similar function just as do the sides of many keepers of the prior art. Neither does defendant's latch have any arm corresponding in design to the upper arm of plaintiffs' latch. If the patent in suit were a pioneer patent and originated the trip or kick that locks the door when it is closed, then the defendant's device might infringe. The patent would be entitled to a broad construction and wide range of equivalency. But it came into an already crowded art with many patents having various devices involving arms, cams, lugs, projections, protuberances and all sorts of contrivances for holding the door in a closed position when it was shut.

The same range of equivalency here contended for by the plaintiffs, so as to include the defendant's structure, would bring plaintiffs' patent within the prior art and invalidate it. It seems to us that the choice lies between holding the plaintiffs' patent invalid for want of patentable novelty over the prior art or hold-

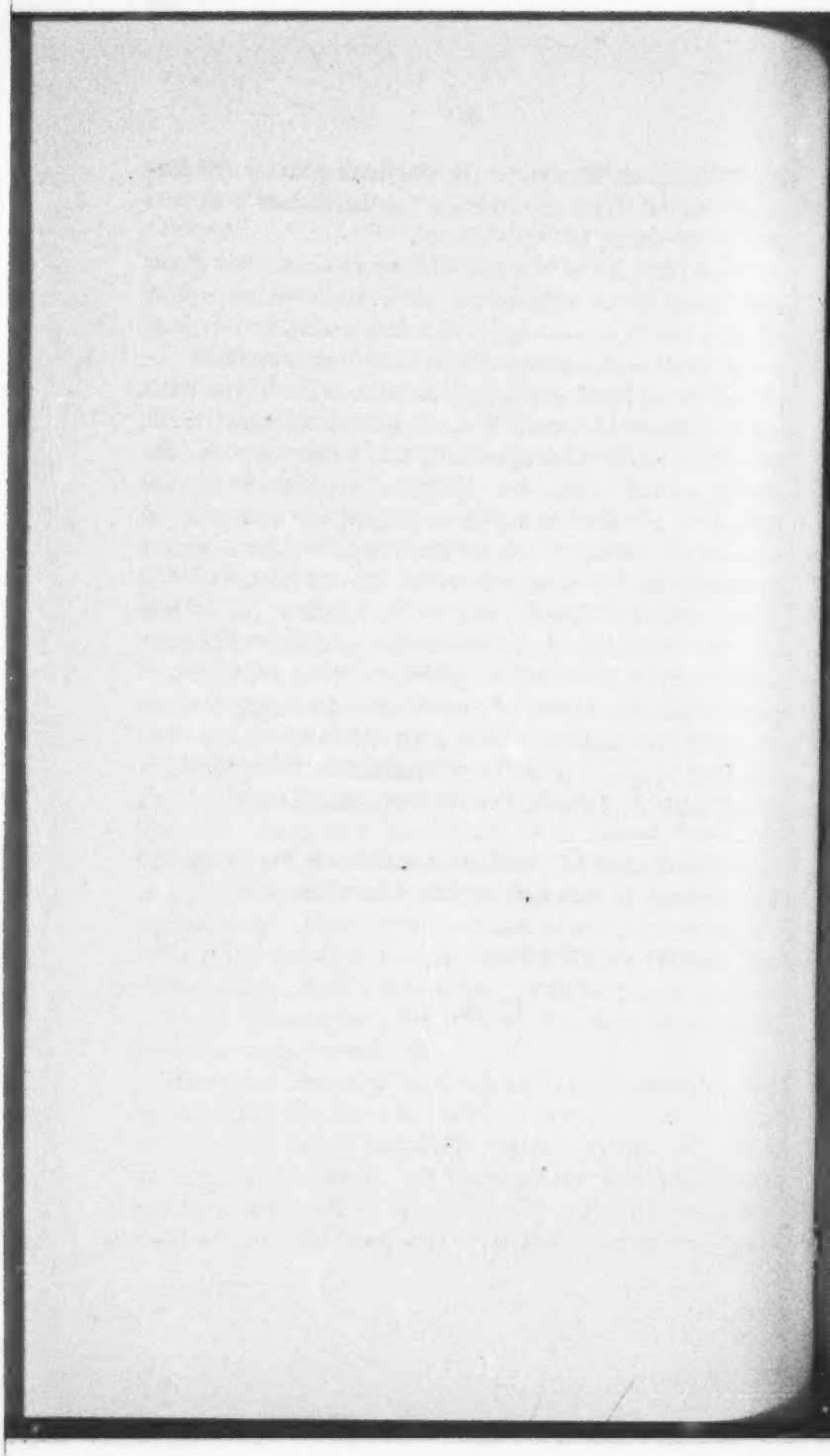
ing it valid but limited to the particular structure disclosed which does not include the defendant's device within its range of equivalency.

The purpose of the patent laws is to reward those who make some substantial discovery or invention which adds to knowledge and takes a step in advance in the procession of the useful arts. It is not the object of those laws to grant a monopoly for every trifling device, every shadow or shade of an idea which would naturally and spontaneously occur to any mechanic skilled in the art. The patent laws never intended to lay such a heavy tax upon the industry of the country without seeing that some real contribution was made to the advancement of the useful arts. Atlantic Works v. Brady, 107 U. S. 192,200. We think that the structure of the defendant's latch and keeper are so unlike those of the plaintiffs' that they do not come within the range of equivalency necessary to constitute infringement. With great respect we are constrained to reach a different conclusion from the Circuit Court of Appeals for the Seventh Circuit.

The decree of the District Court dismissing the bill because of non-infringement is affirmed.

Attest: A truly copy.

Clerk.



IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT, OCTOBER TERM, 1927, JANUARY SESSION, 1928

No. 3935

SANITARY REFRIGERATOR COMPANY, Appellant,

vs.

ALEXANDER F. WINTERS and BASIL R. CRAMPTON, Appellees

Appeal from the District Court of the United States for the Eastern District of Wisconsin

Before Alschuler, Evans, and Page, Circuit Judges

February 9, 1928.

EVANS, C. J.:

A patent, No. 1,385,102, to Winters and Crampton issued July 19, 1921, covering a latch, was the basis of the instant suit. Seven claims are involved, two of which (5th and 6th) are broad, generic claims, while the other five (1, 2, 3, 4, and 7) are narrow, specific claims.

The District Court sustained all claims and found appellant to be an infringer thereof. Thereafter appellees brought suit upon this same patent in the District Court for the eastern district of Pennsylvania and the court there held that claims five and six of the patent were invalid and the other five claims were not infringed by latches similar to the ones made by appellant.

Counsel, with commendable frankness, have made concessions in this court which greatly narrow the controverted issues. Appellant admits the validity of claims 1, 2, 3, 4, and 7, while appellees concede that claims 5 and 6 are invalid. The sole issue remaining,

in view of these concessions, is one of infringement of the five valid claims. The concession that these five claims are valid was accompanied by the statement that validity was recognized only in view of an asserted construction which gave to each claim so narrow a field that infringement was not disclosed.

The inventor said:

"This invention relates to a latch of the swinging lever type, particularly adapted for use on refrigerators though applicable in many other relations where a door is to be closed and held in closed position. The swinging lever latch, or as it is better known, the Condit latch, is pivotally connected at one end to the door jamb or casing, allowing the door to be opened when the latch is thrown to an upper vertical position, and coming down across the meeting edges of the casing and door when swung to horizontal position, engaging with a cam member on the door to wedge the door tightly shut. This latch is a very serviceable latch but is relatively hard to operate due to its attachment to the casing instead of the door, and the same is liable to drop to horizontal position, in which case the door cannot be closed without first raising the lever to upper vertical position while, many times, the door is inadvertently swung toward closed position and against the lever in its horizontal position with injury either to the lever or door or both. In the present invention, it is a primary object and purpose to provide a latch which may be pivotally connected to the door and which is automatically operated to engage with a retaining member or keeper fixed on the door casing when the door is closed irrespective of the vertical or horizontal position of the latch lever, working as well in the one case as the other. A further object of the invention is to construct a latch of few parts, whereby it may be economically made and which will be durable and efficient in service."

Two typical claims are one and seven, herewith quoted:

1. "In combination, a door and casing therefor, a keeper attached to the casing comprising a base, an outstanding post and a head at the outer portion of the post, said head depending below the post and formed with upper and lower curved outer sides coming substantially to a point and with an inner upwardly and inclined side, a member attached to the door comprising a base, an integral outstanding post projecting from the base and a laterally extending arm at the upper end of the post paralleling the base, and a latch lever pivotally mounted between its ends between the said arm and base of said member, said lever having one arm formed with an under cam side extending from the pivot and adapted to be engaged under the depending portion of the keeper, a handle portion extending in the opposite direction from the pivot and another arm projecting from the handle portion a distance from the pivot and lying substantially at right angles to the first arm of the lever and likewise being formed with an inner cam side, substantially as and for the purposes described.

7. "In combination, a door and a casing therefor, a keeper attached to the casing, a latch lever pivotally mounted on the door between its ends, one end of the lever being formed into an operating handle and the other into a keeper engaging arm, a second arm projecting from the handle portion of the lever a short distance from its pivot and at an angle to the first arm, said keeper being formed at its outer sides for engagement with the respective arms when the lever is in horizontal and vertical positions, respectively, as the door is closed, to automatically operate the lever so that it will engage under the keeper when the door is entirely closed, substantially as described."

While appellee conceded that claims five and six were invalid in view of the prior art, we would have no hesitancy in so finding in the absence of this admission.

Whether the other claims are infringed depends entirely upon the position of the patent in suit in the art. No difficulty would be experienced in finding infringe-

ment if the patent were a pioneer or was one covering such an improvement as entitled it to a broad range of equivalency. But the patent does not occupy any such position. It is an exteremely narrow one as a reading of the claims at once discloses. Moreover, the record shows a prior art loaded with latches possessing some of the features of appellee's latch.

Describing appellee's latch, counsel say:

"The latch is attached to the door of the refrigerator and the keeper for the latch is attached to the door jam. * * * The swinging latch of the patent in suit is an automatic latch acting to close and tightly close when the door is moved to shut it irrespective of the position the latch lever may have whether horizontal or level."

The prior art as disclosed by the Kiel patent No. 564,448, the Dent patent No. 67,506, and Charles patent No. 702,185, the Schrader patents Nos. 1,117,709 and 1,170,685, the War patent No. 1,250,736, all refute the contention of asserted novelty, in the location of the keeper upon the door jam and the lever upon the door or in providing for the automatic closing of the door without regard to the position of the lever. It may be true that in some of these disclosures because of the law of gravity the lever invariably takes but one position.

In the Dent patent the keeper was attached to the casing while the member carrying the latch lever was attached to the door. In the Charles latch the keeper was on the door while the other member was on the casing. The Kiel latch had its keeper on the casing and the latch member on the door. Each structure, examples of which are in evidence, works automatically when the door is slammed shut whether the latch lever is in a horizontal or a vertical position.

It follows, therefore, that a patentable novelty, if any exists, is restricted to the particular structure disclosed. What, then, is the novel structure?

In nearly all of the cited prior art structures, the keeper member has a curved post against which a portion of the level strikes when the door is swung. Pat-

entees (Claim 1) describe this portion of the keeper as "an outstanding post and a head at the outer portion of the post, said head depending below the post and formed with upper and lower outer sides coming substantially to a point." The keeper described in the Kiel patent is decidedly similar. The differences between appellees' lever latch and the prior art structures are more pronounced. Automatic operation is dependent upon the cooperation of the latch and the keeper. Consequently there naturally follow differences in the structural design of one member due to difference in structure of the other member. We repeat then that patentable novelty resides in the structural differences of the latches (either in the keeper member or the latch member or in both); that the claims are narrow and their validity is conceded. Our operation of the physical exhibits discloses a basis for the concession of validity. But it is this narrow field and nothing more which the inventor possessed when he secured his patent.

As thus analyzed, limited, and explained, are the claims infringed by appellant's latch?

Appellant's structure has a keeper and a latch member located similarly to the appellees'. But it contends that both its keeper and its latch member differ from those of the patent. Its keeper does not have (so it says) "an outstanding post and a head at the outer portion of the post, said head depending below the post and formed with upper and lower curved outer sides coming substantially to a point," nor does its latch lever have one "arm formed with an under cam side extending from the pivot and adapted to be engaged under the depending portion of the keeper." It supplies its keeper with a lug on the inner or door side and its latch lever is supplied with an arm extending from the pivot of the latch member, but such arm does not engage "the depending portion of the keeper." Rather is it so constructed and so angled as to come in contact with the lug on the head of the keeper. It is this contact between the lug and the arm on the latch which causes the latch to automatically swing and lock

when the door is slammed. Appellant's keeper, though supplied with "a head formed with upper and lower curved outer sides coming substantially to a point" does not, as in the patent in suit, make use of the curved upper sides to direct the movement of the latch when the door is shut. If the arm on its lever extended a little further it would contact with the upper curved outer side portion of the head of the keeper.

The precise question then is, does appellant avoid infringement by placing a lug on the near side of the head of its keeper, the surface of which is curved similarly to the outer surface of its head and which is adapted to contact with the arm projecting from the handled portion of its lever?

Concede the existence of claims that are narrow and restricted to structural design only, yet even in such claims there must be some range of equivalency.

Perhaps the expression "range of equivalency" is not a happy one nor does it describe the thought as accurately as it should. Instead, it would doubtless be better to say that a valid claim should rarely, if ever, have its language construed with absolute literacy. While a valid, narrow claim will be strictly construed, it by no means follows that its terms and expressions should be limited to a hard and fast, unbending definition. Rather must the language of each claim be defined in the light of the meaning given it by the patentee, with an appreciation of the purpose and object of the element in the patented structure. To illustrate. Patentee speaks of a keeper with its base, its post, and its head. The latter member is described as having "upper and lower curved outer sides coming substantially to a point." In our effort to ascertain whether infringement occurred, we must define the head as well as the "sides of the head." Is the outside of appellant's lug a part of the side of the head of the keeper? Certainly it is a part of the head and, in the light of the mechanics of the entire structure, the purpose it serves, we conclude that it is a part of the *side* of the head.

The decree is modified in so far as it sustains the validity of claims five and six of the patent in suit and enjoins the infringement of said claims five and six and to the extent that appellant is directed to account for its gains and profits due to the infringement of said claims five and six. Otherwise the decree is affirmed. The cost in this court shall be divided equally between the parties.

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NOV 4
CHARLES ELMOR

SUPREME COURT OF THE UNITED STATES

Nos. 4 and 14. October Term, 1929.

SANITARY REFRIGERATOR CO., *Petitioner*, v. ALEXANDER F. WINTERS and BASIL R. CRAMPTON, — On Writ of Certiorari to the United States Circuit Court of Appeals for the Seventh Circuit.

4

ALEXANDER F. WINTERS and BASIL R. CRAMPTON, *Petitioners*, v. DENT HARDWARE COMPANY. — On Writ of Certiorari to the United States Circuit Court of Appeals for the Third Circuit.

14

PETITION FOR REHEARING ON BEHALF OF SANITARY AND DENT COMPANIES.

Come now the above-named Sanitary Refrigerator Co., and Dent Hardware Company, and present this, their petition for a rehearing of the above-entitled cause and in support thereof respectfully show:

(1) That the Sanitary Refrigerator Co., in its petition for certiorari on page 7, after assigning error in finding infringement in respect of Winters and Crampton, claims 1, 2, 3, 4 and 7 prayed:

"That your petitioner may have such other and fur-

ther relief in the premises as the nature and circumstances of their case may require."

In a patent case where there is no dispute as to title, as here, ordinarily only two questions are involved:

(a) the validity of the claims in suit;

(b) their infringement.

Error was specifically assigned by the Sanitary Refrigerator Co., in finding infringement and under the general prayer quoted, *supra,* why may not the item of the validity of said claims be passed on?

(2) That said Sanitary Refrigerator Co. did not concede the validity of said Winters and Crampton claims except under such a construction that infringement was not present, and in its appeal to the Court of Appeals for the Seventh Circuit, said Sanitary Refrigerator Co. assigned as error:

"The Court erred in holding the Winters and Crampton patent No. 1,385,102 good and valid as to all the claims thereof (Sanitary R., p. 63)."

Further Sanitary Co., on page 5 of its main brief, paragraph 3, challenged the validity of the Winters & Crampton patent and fully argued this item on pages 13 to 23 of its brief.

(3) That in May, 1928, when said Sanitary Refrigerator Co. filed in this court its petition for certiorari, said Sanitary Refrigerator Co. could not challenge the opinion of the Circuit Court of Appeals for the Third Circuit in the Dent case as said opinion was not filed until October 4th, 1928. After said opinion of the Court of Appeals for the Third Circuit was filed said Sanitary Refrigerator Co. was required merely to call the attention of this Court to the conflict of decisions between the two Circuit Courts of Appeals as this was the only theory on which this Court would order the writ. The decision of the Circuit Court of Appeals for the Third Circuit being in favor of the Dent

Hardware Company and against Winters and Crampton, the petition for the writ of certiorari to the Circuit Court of Appeals for the Third Circuit was filed by Winters and Crampton. Sanitary and Dent did not participate in Winters & Crampton's petition for the writ to the Third Circuit. The Sanitary Refrigerator Co. assigned no error with respect to the Court of Appeals for the Third Circuit, as its opinion was in favor of the Dent Hardware Company.

Speaking with the utmost respect, the finding in the eleventh line of page 3 of the opinion does not seem to be entirely correct, as Sanitary's petition did not assign error in respect of any proceedings in the Third Circuit.

(4) By the declination to consider the invalidity of any of the claims of the Winters & Crampton patent and the holding in effect that all claims of the Winters & Crampton patent as claim 3 and others are valid, the grave and anomalous situation has been created, that any person manufacturing the construction of the Keil patent (Sanitary R., p. 88) (which expired in 1913, and has been public property for sixteen years) under the opinion (unless modified and amplified) might be held an infringer of claim 3 and others of the Winters & Crampton patent granted in 1921 (see pages 15 and 16 of brief for Sanitary and Dent), said claim 3 reading squarely on the Keil structure.

(5) Since that which will infringe if later will anticipate if earlier and

> "Authorities concur that the substantial equivalent of a thing, in the sense of the patent law, is the same as the thing itself; so that if two devices do the same work in substantially the same way, and accomplish substantially the same result, they are the same even though they differ in name, form or shape."

it follows, by the same token, that the Keil patent is an anticipation of the Winters & Crampton patent, since it does the same work in substantially the same way and accomplishes substantially the same result. Hence the structures of Keil and Winters and Crampton are substan-

tially the same, even though they differ in name, form or shape.

(6) The language comparing the Winters & Crampton and Schrader structures (lines 3 to 8, page 8 of the opinion) is equally applicable to the structures of Keil and Winters and Crampton, to wit:

> "It has like it a keeper attached to the door casing with a triangular head, and a lever latch with a handle and two arms whose functions are to trip or give a kick to the latch lever by their coaction with the keeper head and wedge the lower arm under it, regardless of the position of the latch lever when the closing operation beings."

Your petitioner therefore prays this Honorable Court to order that the case be restored to the docket for re-argument, and thereafter, if it shall seem proper, to make such modification of the opinion and decree filed as justice and right may require.

ARGUMENT.

In presenting this petition for rehearing we are fully aware of the reluctance of this Court to rehear or reconsider questions once decided and appreciate the amount of thought and time the Court has already given to this case. We are convinced, however, that it is our duty not only to the Sanitary and Dent Companies but to this Court to ask it again to consider this case for the reasons hereinafter pointed out.

We, therefore, most respectfully urge upon the Court that it, and in justice to all concerned, will review and reverse or revise its ruling, as it did not hesitate to do, in *Tilghman v. Proctor,* 102 U. S. overruling *Mitchell v. Tilghman,* 19 Wallace, where an error had been made. The rehearing is asked on the sincere belief that an unusual and anomalous situation has arisen by reason of the Court assuming the validity of such claims of the Winters &

Crampton patent, as claims 3, and others, for the reason that certain of these claims, as claim 3, are squarely readable word for word on the Keil construction (Sanitary R., p. 88), and any party manufacturing the Keil fastener which has been public property since 1913 might under the opinion be held as an infringer of Winters & Crampton's claims, particularly claim 3, since that which will infringe if later will anticipate if earlier. The keeper of the Winters & Crampton patent merely acts to kick the latch or lever element irrespective of whether said lever stands vertical or horizontal. This is precisely the action of the keeper and lever of the Keil patent. It is humbly submitted that in view of the public interest, the case should be reheard and consideration given to the invalidity of the Winters & Crampton claims. The Court of Appeals for the Third Circuit said:

> "The same range of equivalency here contended for by the plaintiffs, so as to include the defendant's structure, would bring plaintiffs' patent within the prior art and invalidate it. It seems to us that the choice lies between holding the plaintiffs' patent invalid for want of patentable novelty over the prior art or holding it valid but limited to the particular structure disclosed which does not include the defendant's device within its range of equivalency" (page 53, Brief for Sanitary and Dent).

For the foregoing reasons it is respectfully urged that the petition for rehearing be granted to the extent of further considering the validity of Winters and Crampton's claim 3 and other claims, and that the decree of the Circuit Court of Appeals for the Third Circuit be upon further consideration affirmed.

Respectfully submitted,

E. HAYWARD FAIRBANKS,
Counsel for Sanitary and Dent Companies.

CERTIFICATE OF COUNSEL.

I, E. Hayward Fairbanks, counsel for the above-named Sanitary Refrigerator Co. and Dent Hardware Co., do hereby certify that the foregoing petition for a rehearing of this cause is presented in good faith and not for delay.

E. HAYWARD FAIRBANKS,
Counsel for Sanitary Refrigerator Co. and Dent Hardware Co.

November, 1929.

CORRECTED COPY

SUPREME COURT OF THE UNITED STATES.

Nos. 4 and 14.—October Term, 1929.

4	Sanitary Refrigerator Co., Petitioner, *vs.* Alexander F. Winters and Basil R. Crampton.	On Writ of Certiorari to the United States Circuit Court of Appeals for the Seventh Circuit.
14	Alexander F. Winters and Basil R. Crampton, Petitioners, *vs.* Dent Hardware Company.	On Writ of Certiorari to the United States Circuit Court of Appeals for the Third Circuit.

[October 14, 1929.]

Mr. Justice Sanford delivered the opinion of the Court.

These are two suits in equity relating to letters patent No. 1,385,102 for improvements in latches, issued to Winters and Crampton July 19, 1921. They were heard together here. The invalidity of the two general claims of the patent, 5 and 6, has been conceded, and the issues here are limited to the five specific claims, 1, 2, 3, 4 and 7.

In No. 4—hereinafter referred to as the Sanitary case—Winters and Crampton brought suit in the Eastern District of Wisconsin against the Sanitary Refrigerator Co. for infringement of the patent by the latch which it used in the manufacture of refrigerators. The Dent Hardware Co., which had manufactured and sold the latches to the Refrigerator Co., although not itself a party to the suit, employed counsel and conducted the defense of the suit at its own expense. The District Court, after a hearing on pleadings and proof, held that the patent was valid and infringed, enjoined further infringement and ordered an accounting. On appeal to the Circuit Court of Appeals for the Seventh Circuit, the defendant admitted the validity of the five specific claims, "accompanied by the statement that validity was recognized only in view of an asserted construction which gave to each so narrow a field that infringement was not disclosed." The court, finding that the sole

issue remaining was one of the infringement of these claims, held that, while they were extremely narrow and were restricted to the particular structure disclosed, they had some range of equivalency and were infringed by the defendant's latch; and affirmed the decree of the District Court in respect to them. 24 F. (2d) 15.

In No. 14—hereinafter referred to as the Dent case—Winters and Crampton, after the decree of the District Court in the Sanitary case but before that of the Circuit Court of Appeals, brought a suit for infringement in the Eastern District of Pennsylvania against the Dent Hardware Co., the manufacturer of the refrigerator latches. The District Court, on final hearing, held that as to the five specific claims the question was not as to their validity but as to their scope, there being in effect no denial of the plaintiff's right to the specific construction described, and that these claims should be so read as to restrict their right to the specific construction and was not infringed by the defendant's latches; and dismissed the bill of complaint. On appeal to the Circuit Court of Appeals for the Third Circuit, the defendant again conceded that the five claims "were valid if limited to the specific structure disclosed," but claimed that when so limited, it did not infringe. The court, while it had grave doubt as to the validity of these claims, finding that, if valid, their scope was clearly confined to the structural design disclosed and had only a narrow range of equivalency—and not agreeing with the opinion of the Circuit Court of Appeals in the Sanitary case, which meanwhile had been handed down—held that they were not infringed by the Dent latch; and affirmed "the decree of the District Court, dismissing the bill because of noninfringement." 28 F. (2d) 583.

There being a conflict of opinion between the two Circuit Courts of Appeals on the question of infringement, writs of certiorari were thereafter granted in both cases.[1]

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[1]In the Sanitary case the petition for the writ of certiorari was filed before the decree of the Circuit Court of Appeals for the Third Circuit in the Dent case had been handed down; and was then denied. 278 U. S. 599. But after the handing down of that opinion showing the conflict as to the question of infringement, was brought to our attention by a petition for rehearing, the certiorari was granted. 278 U. S. 587. However, the Refrigerator Co. did not challenge the correctness of the holding of the Circuit Court of Appeals for the ~~Third~~ Seventh Circuit that the five specific claims were valid; and the petition was based entirely on the conflict of opinion as to the question of infringement.

1. Since both courts in the Sanitary case held the five specific claims to be valid, and neither court in the Dent case held them to be invalid, and the Hardware Co. in defending for the Refrigerator Co. in the Sanitary case and for itself in the Dent case, admitted in both Circuit Courts of Appeals that these claims were valid if limited to the specific structure disclosed, we have no occasion here to determine the question as to the validity of these claims when thus limited; especially as the petition for certiorari in the Sanitary case did not question the decree of the Circuit Court of Appeals for the ~~Third~~ Circuit in respect to the validity of these claims, but assigned as error merely its holding in reference to the question of infringement and was based solely on the conflict between the two circuits in respect to that question.[2]

2. Nor have we occasion here to consider at length whether, as urged by Winters and Crampton, the decree of the Circuit Court of Appeals for the Seventh Circuit affirming the interlocutory order of the District Court adjudging the infringement and ordering an accounting, finally and conclusively determined the question of infringement so as to become binding upon the Circuit Court of Appeals for the Third Circuit. The bill in the Dent case was filed before the judgment of the Circuit Court of Appeals for the Seventh Circuit had been rendered. ~~It~~ was not set up by Winters and Crampton ~~as a defense~~ in the Dent case by any amendment to the pleadings; nor was it even introduced in evidence in that case. In short, there is nothing in the record in that case to raise the defense of *res judicata* or estoppel by judgment; and the only effect of the decree in the Seventh Circuit when called to the attention of the Circuit Court of Appeals for the Third Circuit in argument was, at most, that which it had under the doctrine of comity, constituting a rule, not of law, but of practice, convenience and expediency; and if we thought the action of the Circuit Court of Appeals for the Third Circuit "correct upon the merits, we should not reverse its action" though we were of opinion it had not given sufficient weight to that doctrine. See *Mast, Foos & Co.* v. *Stover Mfg. Co.*, 177 U. S. 485, 488.

3. This brings us to the question brought up for review by the writs of certiorari, as to whether the five specific claims of the

[2] See Note 1, *supra*.

Winters and Crampton patent were infringed by the refrigerator latches manufactured by the Dent Hardware Co. and used by the Refrigerator Co.

So far as this question is concerned there is no substantial difference in the evidence in the two cases. As there was a concurrent finding in the two lower courts in the Sanitary case that they were infringed, and a concurrent finding in the two lower courts in the Dent case that they were not infringed, and the cases have been brought here because of the conflict of decision in the two Circuit Courts of Appeals, it is clear that under these circumstances, neither properly calls for the strict application of the general rule as to the acceptance by this Court of the concurrent findings of the lower courts on questions of fact, and we consider independently the question as to which of the decisions on this question is based upon the sounder reasoning and is correct. Compare *Thomson Co.* v. *Ford Motor Co.*, 265 U. S. 445, 447; *Concrete Appliances Co.* v. *Gomery*, 269 U. S. 177, 180. Furthermore upon the undisputed evidence the question of infringement resolves itself in each case into one of law, depending upon a comparison between the structure disclosed on the face of the patent and the device shown in the Dent latch, and the correct application thereto of the rule of equivalency. Compare *Singer Company* v. *Cramer*, 192 U. S. 265, 275.

4. In the application for their patent Winters and Crampton said: "This invention relates to a latch of the swinging lever type, particularly adapted for use on refrigerators though applicable in many other relations where a door is to be closed and held in closed position. The swinging lever latch . . . is pivotally connected at one end to the door jamb or casing, allowing the door to be opened when the latch is thrown to an upper vertical position, and coming down across the meeting edges of the casing and door when swung to horizontal position, engaging with a cam member on the door to wedge the door tightly shut. This latch is a very servicable latch but . . . is liable to drop to horizontal position in which case the door cannot be closed without first raising the lever to upper vertical position while, many times, the door is inadvertently swung toward closed position and against the lever in its horizontal position with injury either to the lever or door

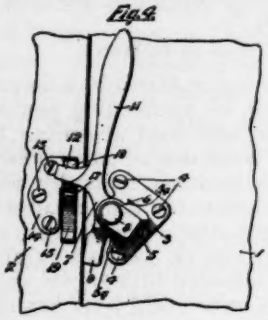
or both. In the present invention, it is a primary object and purpose to provide a latch which may be pivotally connected to the door and which is automatically operated to engage with a retaining member or keeper fixed on the door casing when the door is closed irrespective of the vertical or horizontal position of the latch lever, working as well in the one case as the other. A further object of the invention is to construct a latch of few parts, whereby it may be economically made and which will be durable and efficient in service. . . . The ability to close the door and latch it automatically, irrespective of the position of the latch lever insures against injury to the latch or door and also insures that the door will be latched when it is swung shut."

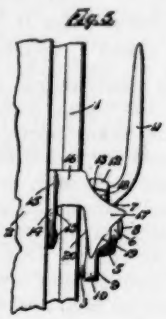
Claims 1 and 7, which are typical, read as follows:

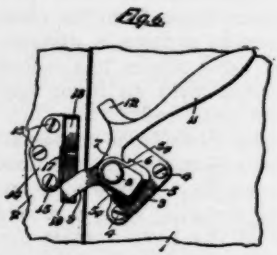
"1. In combination, a door and a casing therefor, a keeper attached to the casing comprising a base, an outstanding post and a head at the outer portion of the post, said head depending below the post and formed with upper and lower curved outer sides coming substantially to a point and with an inner upwardly and inwardly inclined side, a member attached to the door comprising a base, an integral outstanding post projecting from the base and a laterally extending arm at the upper end of the post paralleling the base, and a latch lever pivotally mounted between its ends between the said arm and base of said member, said lever having one arm formed with an under cam side extending from the pivot and adapted to be engaged under the depending portion of the keeper, a handle portion extending in the opposite direction from the pivot and another arm projecting from the handle portion a distance from the pivot and lying substantially at right angles to the first arm of the lever and likewise being formed with an inner cam side, substantially as and for the purposes described.

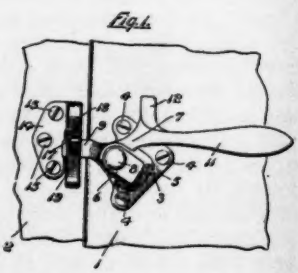
"7. In combination, a door and a casing therefor, a keeper attached to the casing, a latch lever pivotally mounted on the door between its ends, one end of the lever being formed into an operating handle and the other into a keeper engaging arm, a second arm projecting from the handle portion of the lever a short distance from its pivot and at an angle to the first arm, said keeper being formed at its outer sides for engagement with the respective arms when the lever is in horizontal and vertical positions, respectively, as the door is closed, to automatically operate the lever so that it will engage under the keeper when the door is entirely closed, substantially as described."

We insert here reproductions (on a reduced scale) of Figure 4 of the drawings which is a front elevation showing the door approaching closed position with the swinging lever in vertical relation to the door; Figure 5, a side elevation thereof; Figure 6, a front elevation showing the action on the swinging lever as the door approaches closed position after the lever has been in horizontal position; and Figure 1, a front elevation showing the latch in closed position and holding a door closed. These show the patented device in detail.









The operation of closing and latching the door is thus described in the specification:

"When the door is moved toward closing position with the lever vertically located, the cam side 13 of arm 12 strikes against the curved upper side 18 of head 17, causing the lever to be automatically swung toward the horizontal, and bringing the arm 9 into place so as to pass under the lower point of the keeper head

so that it may engage at its outer side against the wedging cam side 20 of the head. It is apparent that by giving the end of handle 11 a downward movement, the door will be wedged tightly shut as the arm 9 moves upwardly and against the incline 20. . . . If the lever has dropped to horizontal position while the door is open, the closure of the door and engagement of the lever with the keeper is accomplished by merely swinging the door shut, in which case, as shown in Figs. 6 and 7, the arm 9 strikes with its inclined cam side 10 against the lower curved side 19 of the head 17 of the keeper, causing the handle to be automatically turned toward vertical position. This movement continues until the arm 9 passes by the lower point of the keeper head 17 or, as usually occurs, the arm 12 comes into contact with the head at the upper side 18, whereupon the lever is actuated so as to bring the arm 9 under the depending portion of the keeper, the same as before described when closing the door with the lever in vertical position. In any case, the latch lever engages with the latch keeper when the door is closed irrespective of the position of the lever."

While this patent came into a prior art crowded with various latch devices for holding a door in closed position when it was shut and was not a pioneer patent entitled to a broad range of equivalents, the structure which it disclosed was meritorious and soon attained a large measure of commercial success.

5. The Dent latch is manufactured under letters patent No. 1575647 for lock devices for refrigerator doors issued March 9, 1926 to T. O. Schrader, assignor of the Hardware Co. In his application for this patent Schrader said: "I am aware of [Winters and Crampton] patent No. 1385102 dated July 19, 1921, and I disclaim the structure therein disclosed, as my invention is differentiated therefrom, since whereas the structure disclosed in said patent utilizes a pin 12 carried by the latch arm 11, which coacts with an upper cam edge 18 of the keeper member 17; in my novel construction the upper edge of my keeper plate b^3 has no function, but the pivotal latch c^6 carries a cam c^1 inclined to the pivot of said latch and adapted to coact with a pin b^8 carried by and laterally projecting from, the inner wall of the keeper plate b^3 thereby to swing the terminal tongue of the latch into the horizontal locking position; and to none of the constructions of the prior art do I herein make claim."

The latch manufactured by the Hardware Co. which is involved in both these cases, differs only slightly in form from that shown

in the Schrader patent. It is in the main an exact reproduction of the structure disclosed in the Winters and Crampton patent. It has like it a keeper attached to the door casing, with a triangular head, and a lever latch with a handle and two arms whose functions are to trip or give a kick to the latch lever by their coaction with the keeper head and wedge the lower arm under it, regardless of the position of the latch lever when the closing operation begins. The only differences are that in the Dent latch the keeper has on the inner or door side of the triangular head a lug projecting inwardly towards the latch lever; and the upper arm of the latch lever is a short inclined cam placed at the pivot of the latch lever, and so constructed and at such an angle that it rides upon and contacts with the lug on the side of the keeper head, instead of with its upper curved side as in the Winters and Crampton structure. The coaction of this shortened arm with the lug operates, however, on the cam principle, just as the coaction of the longer upper arm with the curved upper surface of the keeper head in the Winters and Crampton structure, to trip or kick the lower arm of the latch lever into the wedged position under the keeper head.

6. Despite the changes in the Dent latch from the Winters and Crampton structure we find that the two devices are substantially identical, operating upon the same principle, and accomplishing the same result in substantially the same way, and that the slight change in the form of the Dent latch is merely a colorable departure from the Winters and Crampton structure.

In the Dent latch, as stated by the Circuit Court of Appeals for the Seventh Circuit, the lug on the inner side of the triangular head of the keeper is a part of the side of the head. And at the place where the shortened upper arm of the latch lever comes in contact with it, the surface of this lug forms in effect the upper side of the keeper head as a substitute for the upper side in the Winters and Crampton structure, which, while left in place, performs no function whatever, just as if it were cut away.

Although the claims of the Winters and Crampton patent are limited to the structure therein disclosed, we find that they are infringed by the device of the Dent latch. Both Circuit Courts of Appeals recognized that the Winters and Crampton patent, al-

though thus limited had some range of equivalents; and we think that, though it be a narrow one, it is sufficient.

There is a substantial identity, constituting infringement, where a device is a copy of the thing described by the patentee, "either without variation, or with such variations as are consistent with its being in substance the same thing." *Burr* v. *Duryee,* 1 Wall. 531, 573. Except where form is of the essence of the invention, it has little weight in the decision of such an issue; and, generally speaking, one device is an infringement of another "if it performs substantially the same function in substantially the same way to obtain the same result . . . Authorities concur that the substantial equivalent of a thing, in the sense of the patent law, is the same as the thing itself; so that if two devices do the same work in substantially the same way, and accomplish substantially the same result, they are the same, even though they differ in name, form or shape." *Machine Co.* v. *Murphy,* 97 U. S. 120, 125. And see *Elizabeth* v. *Pavement Co.,* 97 U. S. 126, 137. That mere colorable departures from the patented device do not avoid infringement, see *McCormick* v. *Talcott,* 20 How. 402, 405. A close copy which seeks to use the substance of the invention, and, although showing some change in form and position, uses substantially the same devices, performing precisely the same offices with no change in principle, constitutes an infringement. *Ives* v. *Hamilton,* 92 U. S. 426, 430. And even where, in view of the state of the art, the invention must be restricted to the form shown and described by the patentee and cannot be extended to embrace a new form which is a substantial departure therefrom, it is nevertheless infringed by a device in which there is no substantial departure from the description in the patent, but a mere colorable departure therefrom. Compare *Duff* v. *Sterling Pump Co.,* 107 U. S. 636, 639.

The fact that, as the Dent device makes two reciprocal changes in the form of the Winters and Crampton structure, one by the insertion of the lug on the keeper head, and the other in the shortened upper arm of the latch lever, and one alone of these changes cannot be substituted in the Winters and Crampton structure without the other, so as to make it operative, is plainly insufficient to avoid the infringement.

Nor is the infringement avoided, under the controlling weight of the undisputed facts, by any presumptive validity that may attach to the Schrader patent by reason of its issuance after the Winters and Crampton patent.

The decree of the Circuit Court of Appeals for the Seventh Circuit in the Sanitary case is affirmed; and the decree of the Circuit Court of Appeals for the Third Circuit in the Dent case is reversed.

No. 4 Affirmed.
No. 14 Reversed.

A true copy.

Test:

Clerk, Supreme Court, U. S.